

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

United States Court of Appeals
for the District of Columbia Circuit

FILED JUL 30 1964

Nathan J. Paulson
BRIEF FOR PETITIONER AND APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,093

920

HENRY G. BARTSCH,
d/b/a
AIRPORT DISPATCHING SERVICE,

Petitioner,

v.

THE WASHINGTON METROPOLITAN
AREA TRANSIT COMMISSION,

Respondent.

Petition for Judicial Review of
WMATC Administrative Order

JACK H. OLENDER

910 - Seventeenth St., N. W.
Washington, D. C. 20006

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(i)

QUESTIONS PRESENTED

On July 3, 1963, the respondent Commission by WMATC Order No. 283 granted the Petitioner's competitor, Airport Transport, Inc., a grandfather Certificate of Public Convenience and Necessity No. 7-B to transport passengers for hire as follows:

"IRREGULAR ROUTES, SPECIAL AND CHARTER OPERATIONS: Passengers and their baggage between the Washington National Airport on the one hand, and points and places in the District of Columbia and that portion of Maryland, situated within the Washington Metropolitan Area Transit District on the other, restricted to passengers having a prior or subsequent movement by air to or from the Washington National Airport."

on a finding that such group-riding limousine transportation in seven (7) passenger vehicles was not, under Article XII sections 1-C and 2-d of the Washington Metropolitan Area Transit Regulation Compact (74 Stat. 1031) on its effective date March 22, 1961 exempt from its Certificate requirements under Article XII, Section 4a.

The questions presented by this petition for judicial review are:

I. Was such transportation, conducted in less than 9-passenger capacity vehicles (the 7-passenger "limousines" and the taxicabs owned by the applicant-grantee Airport Transport, Inc.) exempt from "grandfather" certification under Article XII, Section 4a of the Compact (74 Stat. 1031)?

and

II. Was the applicant-grantee on March 22, 1961 "*bona fide*" engaged in any transportation subject to this Act (74 Stat. 1031)?

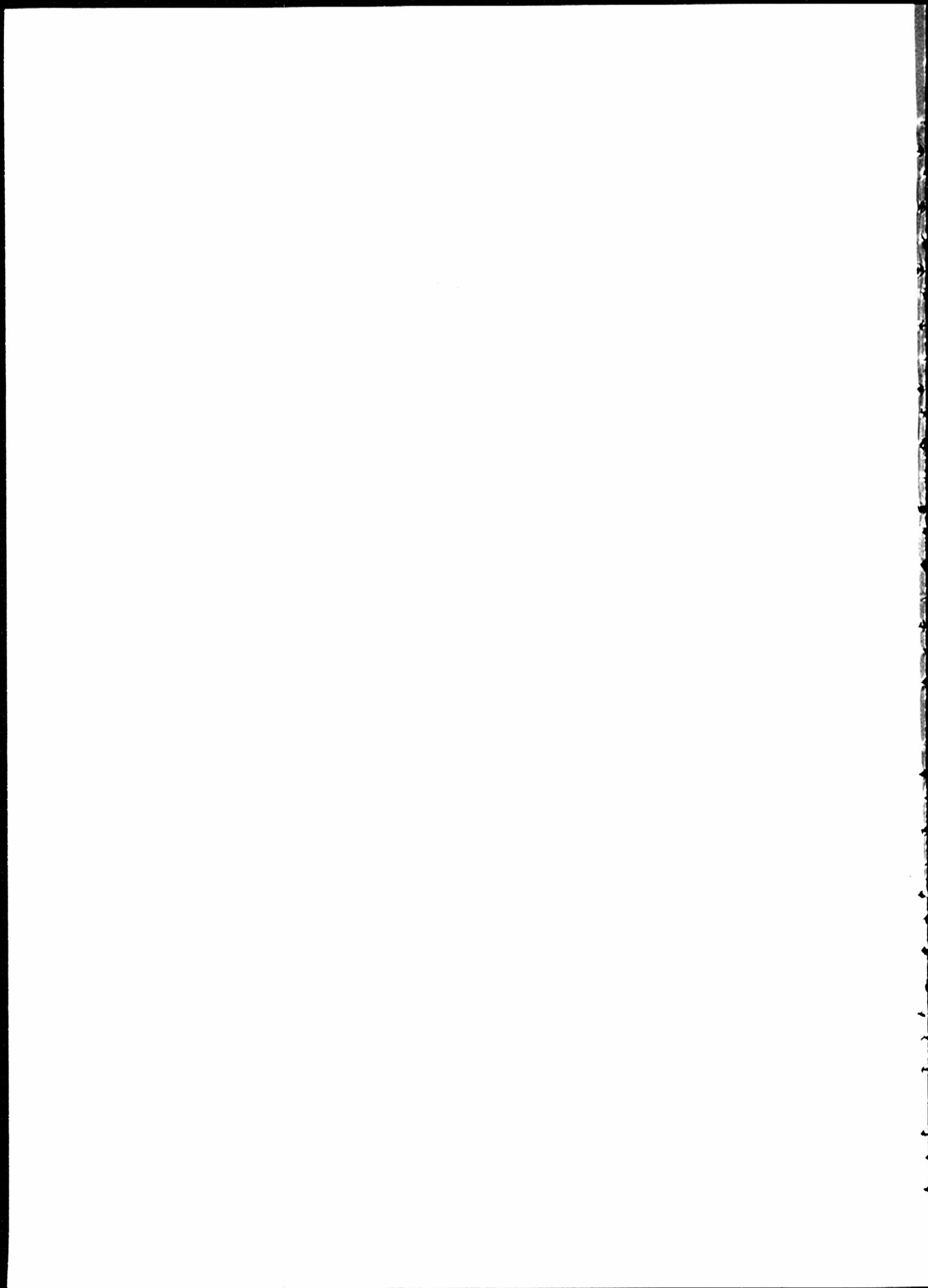
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TABLE OF AUTHORITIES

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BRIEF FOR PETITIONER

JURISDICTIONAL STATEMENT

This is a petition for review of Order No. 283 of the Washington Metropolitan Area Transit Commission purporting to grant to the petitioner's competitor, Airport Transport, Inc., a "grandfather" certificate for irregular route taxicab, limousine and bus service between points and

places in the District of Columbia (as well as the Washington Metropolitan Area of Maryland) and points and places on the Washington National Airport Reservation on the Virginia side of the Potomac River.

Petitioner applied for reconsideration of Order No. 283 on August 2, 1963 (Supp. R. Item No. 1; P.A. 18); the application for reconsideration was formally denied by the respondent Commission on April 17, 1964 by WMATC Order No. 356 (Supp. R. Item No. 2; P.A. 27-28).

This petition for review of Order No. 283 was filed in this Court on September 3, 1963.

The jurisdiction of this Court is statutory. (Article XII, Section 17a of The Compact, 74 Stat. 1031).

STATEMENT OF THE CASE

On March 22, 1961, when the Washington Metropolitan Area Transit Commission came into being as an instrumentality of the District of Columbia and the States of Maryland and Virginia (Article II, 74 Stat. 1031), the petitioner and the certificate-grantee Airport Transport, Inc., were each *bona fide* engaged in the ICC-exempt motor carrier transportation of passengers in vehicles of 5 and 7-passenger capacity on a group-riding flat zone fare basis between points and places in the District of Columbia and points and places on the Washington National Airport Reservation. This reservation then was, and continues to be, under the exclusive jurisdiction of the United States.

Non-scheduled passenger transportation so conducted in for-hire vehicles of less than 9-passenger capacity was also exempt from the certification authority of the 1961 Compact (74 Stat. 1031). *Montgomery Charter Service Inc. v. Washington Metropolitan Area Transit Commission*, No. 17,307, ___ U.S. App. D.C. ___, 325 F. 2d 230 (1963).

Notwithstanding that judicial ruling of this Court and the pending denial of this petitioner's "Section 4a" application for a certificate under the Compact Amendment of October 9, 1962 (74 Stat. 764), the respondent Commission has issued its Order No. 356. (Supp. R. Item No. 2; P.A. 27) refusing to rescind or modify the apparently conflicting conclusion of law in Order No. 283 (R. Item No. 20; P.A. 15) here on review.

This petition for review further seeks an adjudication on the respondent Commission's less-apparent finding that the grantee's unlawful emergency use in March 1961 of buses owned by another corporation and restrictively licensed and authorized (P.U.C. Docket No. 3616, Order No. 4541 issued May 29, 1959, effective until August 31, 1962) (2nd Supp. Transcript, p. 10) by the Public Utilities Commission of the District of Columbia to operate only on routes to Friendship Airport in Baltimore County, Maryland, can be recognized by the respondent Commission as "bona fide transportation" operation entitled to be certificated under the mandatory provisions of Article XII, section 4a of the Compact.

STATUTE INVOLVED

1. Washington Metropolitan Area Transit Regulation Compact
74 Stat. 1031 approved September 15, 1960 and effective March 22, 1961
of which the relevant and material portions are:

TITLE II

Compact Regulatory Provisions

ARTICLE XII

Transportation Covered

1. (a) This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation service, except —

* * * * *

(c) Notwithstanding the provisions of paragraph (a) of this section, this Act shall apply to taxicabs and other vehicles having a seating capacity of eight passengers or less in addition to the driver thereof with respect only to (i) the rate or charges for transportation from one signatory to another within the confines of the Metropolitan District, and (ii) requirements for minimum insurance coverage.

Definitions

2. As used in this Act —

(a) The term "carrier" means any person who engages in the transportation of passengers for hire by motor vehicle, street railroad, or other form or means of conveyance.

(b) The term "motor vehicle" means any automobile, bus, or other vehicle propelled or drawn by mechanical or electrical power on the public streets or highways of the Metropolitan District and used for the transportation of passengers.

* * * * *

(d) The term "taxicab" means any motor vehicle for hire (other than a vehicle operated, with the approval of the Commission, between fixed termini on regular schedules) designed to carry eight persons or less, not including the driver, used for the purpose of accepting or soliciting passengers for hire in transportation subject to this Act, along the public streets and highways, as the passengers may direct.

* * * * *

Certificates of Public Convenience and Necessity; Routes and Services.

4. (a) No person shall engage in transportation subject to this Act unless there is in force a certificate of public convenience and necessity issued by the Commission authorizing such person to engage in such transportation; provided, however, that if any person was bona fide engaged in transportation subject to this Act on the effective date of this Act, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within 90 days after the effective date of this Act. Pending the determination of any such application, the continuance of such operation shall be lawful.

Reconsideration of Orders

16. Any person affected by any final order or decision of the Commission may, within thirty days after the publication thereof, file with the Commission an application in writing requesting a reconsideration of the matters involved, and stating specifically the errors claimed as grounds for such reconsideration. No person shall in any court urge or rely on any ground not so set forth in such application. The Commission, within thirty (30) days after the filing of such application, shall either grant or deny it. If such application is granted, the Commission, after giving notice thereof to all interested persons, shall, either with or without hearing, rescind, modify, or affirm its order or decision. The filing of such an application shall act as a stay upon the execution of the order or decision of the Commission until the final action of the Commission upon the application, except that upon written consent of the applicant such order or decision shall not be stayed unless otherwise ordered by the Commission. No appeal shall lie from any order of the Commission until an application for reconsideration has been made and determined.

Judicial Review

17. (a) Any party to a proceeding under this Act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the court of appeals of the United States for the fourth circuit, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty (60) days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside. A copy of such petition shall forthwith be served upon any member of the Commission and thereupon the Commission shall certify and file with the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may

modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The court may affirm or set aside any such order of the Commission, and state the reasons therefor, and such judgment shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in §§ 239 and 240 of the Judicial Code, as amended (U.S.C. Title 28, §§ 346 and 347).

* * * * *

STATEMENT OF POINTS

1. The respondent Commission erred in its conclusion that the 1961 Compact (Article XII, section 4a, 74 Stat. 1031) authorized its grant of a Certificate of Public Convenience and Necessity for the passenger transportation Airport Transport, Inc. was conducting on March 22, 1961 in vehicles for hire of less than 9-passenger capacity.

2. The respondent Commission erred in its failure to recognize that the unlawful sporadic emergency use of buses owned by another corporation, and prohibited from such use by express Order of the Public Utilities Commission of the District of Columbia, was not a "bona fide" transportation operation for which the respondent Commission might issue a Certificate of Public Convenience and Necessity under Article XII, section 4a of the Compact (74 Stat. 1031).

SUMMARY OF ARGUMENT

I.

The only March 22, 1961 *bona fide* transportation conducted by the grantee Airport Transport, Inc. named in the respondent Commission's Order No. 283 was performed in vehicles of less than 9 passenger capacity, hence was exempt under Article XII, section 1-c of the Compact and uncertifiable under section 4a (74 Stat. 1031).

II

The willful use of buses of another corporation in transportation prohibited them by a valid order of the Public Utilities Commission of the District of Columbia mandatorily administratively noticeable by the respondent Commission (Article XII, sections 21, 22, 74 Stat. 1031) does not constitute a "bona fide" transportation operation for which the respondent Commission may issue a "grandfather" certificate of Public Convenience and Necessity under the authority of Article XII, section 4a of the Compact (74 Stat. 1031).

ARGUMENT

I. Airport Transport, Inc. Was Not Entitled to a Certificate of Public Convenience and Necessity Covering Its Bona Fide Airport Transportation Operations Conducted in Vehicles of Less Than 9-Passenger Capacity.

This Court, in the case of *Montgomery Charter Service, Inc. v. Washington Metropolitan Area Transit Commission*, No. 17,307, ___, U.S. App. D.C. ___, 325 F.2d 230 (1963), has ruled unscheduled Washington National Airport transportation in vehicles of less than 9-passenger capacity is exempt from the Certificate requirements of the Compact under sections 1-c and 2d of Article XII thereof.

Notwithstanding, Order No. 283, here on review, expressly finds as a conclusion of law that such unscheduled Washington National Airport transportation is not exempt from certification requirements of the 1961 Compact (74 Stat. 1031). Order No. 283 is, for this reason, invalid and should be set aside and held for nought.

- II. Airport Transport, Inc. Was Not (Under Article XII, sec. 4a of 74 Stat. 1031) entitled to a "Grandfather Right" Certificate of Public Convenience and Necessity For Its Use of Buses of More Than 8-Passenger Capacity in Willful Disregard of D. C. Public Utilities Commission Order of Which the Respondent Commission Was Informed and Is Required to Take Official Notice.

The applicant, Airport Transport, Inc. by its own document Exhibit 21a (R. Item No. 23; P.A. 28) and by admission (R. Item No. 22, p. 4⁵, 2³⁵ and p. 3¹, 3³) has established on the record that in the first three weeks of March, 1961 there were only 3 Metropolitan Area trips performed in vehicles of bus (over 8-passenger) size and that every one of these buses was owned by Airline Transport, Inc., a distinct Corporation.

The records of the Public Utilities Commission of the District of Columbia in its Docket File No. 3616 show that the buses of Airline Transport, Inc. were by D.C. P.U.C. Order No. 4591 in 1961 unauthorized and expressly prohibited from operating in the service to which Airport Transport, Inc. claims to have engaged them.

The respondent Commission was informed and alerted to these Public Utilities Commission Orders (2nd Supp. R. ; P.A. 70 } and under Article XII, sections 21 and 22 of the Compact, is by law obligated to give administrative notice and full faith and credit thereto.

By no stretch of statutory interpretation may such sporadic 1961 bus operation in willful disregard of express D.C. Public Utilities Commission prohibition be found "*bona fide*" and perpetual under the grandfather certificate provisions of Article XII, section 4a.

A fortiori, any certificate by special grace issuable for validation of such "emergency" operations by bus should not be unrestricted as to vehicle size thereby to cover exempted operations in vehicles of less than 9-passenger capacity.

CONCLUSION

For the reasons hereinabove advanced, petitioner respectfully submits:

1. That Order No. 283 of the respondent Commission be vacated and set for nought; and

2. That the mandate of this Court in the premises provide that no "grandfather right" certificate issue on the Application No. 46 of Airport Transport, Inc. except under the express statutory authority of the Compact as amended October 9, 1962 and for the bona fide operation of vehicles of 8 or less passenger capacity so established by the record therein.

Respectfully submitted,

JACK H. OLENDER

910 - Seventeenth Street, N.W.
Washington, D. C. 20006

Attorney for Petitioner

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APPENDIX

BEFORE THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION
WASHINGTON, D. C.

Application [Application No. 46]
of
AIRPORT TRANSPORT, INC.
and
AIRPORT TRANSPORT INCORPORATED
OF VIRGINIA
for

Certificate of Public Convenience and Necessity
before the
WASHINGTON METROPOLITAN AREA
TRANSIT COMMISSION

Application for Certificate of
Public Convenience and Necessity
Before the

Washington Metropolitan Area Transit Commission

I. Application of AIRPORT TRANSPORT, INC., a Delaware
(Name) (Trade Name)
corporation, and AIRPORT TRANSPORT INCORPORATED OF VIRGINIA,
a Virginia corporation which is a wholly-owned subsidiary,

(State whether individual partnership or coporation. If partnership,
give names of all partners. If corporation, give date and State of incorporation)

whose business address is Washington National Airport,
(Street)

Washington 1, D.C.
(City)

(State)

II. Appropriate authority is applied for to continue the following operations which were being conducted as of March 22, 1961:

<u> X </u>	Regular Route Common Carrier City-Suburban Operation;
<u> X </u>	Sightseeing Operations; <u> X </u> Charter Operations;
X	Contract Operations or X Other Operations.

III. Applicant attaches the following exhibits to this application:

Exhibit No. 1: A statement or statements of the authority sought covering each operation checked in Paragraph II. Such statements of authority should conform to your bona fide operation, authorized or being conducted as of March 22, 1961, and should reflect the proposed working of the certificate or certificates to be issued by this Commission.

Exhibit No. 2: Authority issued by state or federal agency or other documents (include affidavits for any operation that was exempt from regulation) as evidence of bona fide operations as of March 22, 1961.

Exhibit No. 3: List of vehicles to be used in combined operations, showing make, model, year, seating capacity, and whether air conditioned.

Exhibit No. 4: Map showing routes and/or territory served as of March 22, 1961.

Exhibit No. 5: A current balance sheet and income statement.

Exhibit No. 6: Certification by proper state official that applicant is duly qualified to do business in each State in which applicant conducts operations.

Exhibit No. 7: Copy of all tariffs in effect on March 22, 1961.

Exhibit No. 8: List all persons controlling, controlled by or under common control with applicant, or affiliated through stock ownership or interlocking directorates. Describe the nature of the business of any such person, the State and date of incorporation and the States in which each of such persons is engaged in operations:

[See attached exhibit]

IV. Name and address of person to whom notices, orders and correspondence should be addressed: Moe Lerner, President, AIRPORT TRANSPORT, INC., Washington National Airport, Washington 1, D.C.

I, the undersigned official of the above company, on oath, state that the above information, and all exhibits attached hereto, is true and correct to the best of my knowledge and belief.

/s/ Moe Lerner
(Signature)

President
(Official Title)

AIRPORT TRANSPORT, INC.,
a Delaware corporation

AIRPORT TRANSPORT INCORPORATED
OF VIRGINIA, a Virginia
corporation

Subscribed and sworn before me this,
the 20th day of June, 1961

/s/ Robert V. Edwards
(Notary Public)

My Commission expires: 7-11-64
[SEAL - ARLINGTON COUNTY]

INSTRUCTIONS

1. REFERENCE.---See Section 4, Article XII, of the Compact and Regulation 52 adopted thereunder.

2. FORM.---If this form is not used, application shall be typewritten or printed on paper 8 or 8 1/2 inches wide and 10 1/2 or 11 inches long, with a margin of 1 1/2 inches on the left side and 1 inch on the right side. If directly typewritten, or if facsimile reproduction of typewriting, the impression shall be on only one side of the paper. Quotations shall be indented. All copies must be clearly and permanently legible. An original and one copy shall be filed.

3. EXHIBITS.---Shall be typewritten or printed and may be of any convenient size but shall be folded to conform to the size of the application. An original and one copy shall be filed.

4. MANNER OF EXECUTION.---The application shall be signed in ink by applicants, if individuals, by all partners, if a partnership; and if corporations, associations, or other similar forms of organization, by executive officers having knowledge of all matters therein contained and duly designated for that purpose by applicants.

5. WHERE FILED.---The application shall be filed with the Executive Director of the Commission at 1801 N. Moore Street, Arlington 9, Virginia.

6. WHEN ADDITIONAL SPACE REQUIRED.---Attach to the application a full-size supplemental sheet, making reference thereto in the form. Do not paste riders to any page.

EXHIBIT No. 1

(A) Regular Route Common Carrier City-Suburban Operation

Authority is sought to travel on regular routes to and from Washington National Airport and Statler, Mayflower, and Willard Hotels and downtown terminal at 1508 L Street, N. W. (or new location for downtown terminal as same may occur in the future) by limousine and bus service.

Service from Washington National Airport to these points on these routes from 6: 00 AM to 12: 00 Midnight is on a "headway" basis and from 12: 00 Midnight to 6: 00 AM is on an "on call as required" basis through intra- and inter-terminal communication.

Outbound from these points in city to Washington National Airport, service is as follows:

(a) From Statler Hotel and downtown terminal:

6:00 AM to Midnight on headway basis

12:00 Midnight to 6:00 AM on call-as-required

basis by inter-terminal communication

(b) From Mayflower and Willard Hotels:

7:00 AM to 7:00 PM, every half-hour on the hour
and half-hour

7:00 PM to 7:00 AM, on call-as-required basis by
inter-terminal communication

(B) Sightseeing Operations

AIRPORT TRANSPORT, INC. and AIRPORT TRANSPORT, INC.
OF VIRGINIA offer sightseeing services on an hourly-rate basis with
licensed sightseeing chauffeurs for sightseeing in the Metropolitan Area
of Washington, D. C.

(C) Contract Operations

These consist of varying operations including but not limited to
rental of chauffeur-driven limousines and buses for funerals, weddings,
official governmental functions, carrying of baggage, carriage of diver-
sionary flight passengers, etc. See also description under "Charter
Operations."

(D) Charter Operations

Limousines, taxicabs, and buses are available on basis of charter
for carrying of passengers on an as-directed basis.

(E) Other Operations

Applicant operates taxicabs, limousines, and buses on non-
scheduled basis on varying routes to and from Washington National Air-
port and various points in the Metropolitan Area of Washington, D. C.

All of the above operations I(A) through I(E) have been carried on
continuously since 1941 under authority of contract with the Federal
Aviation Agency and its predecessor agencies under a five-year term
contract which has been renewed at the end of each period.

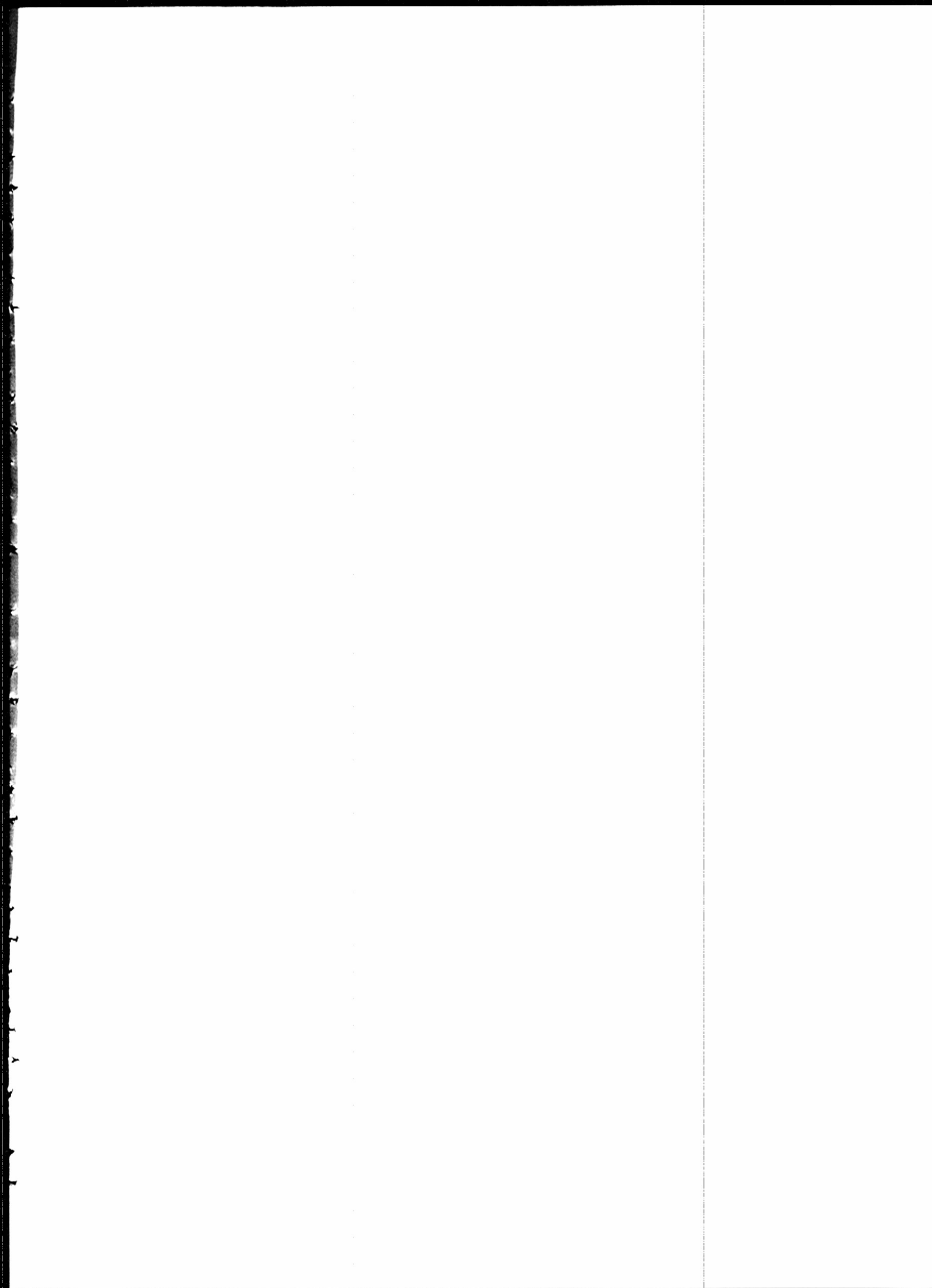
EXHIBIT No. 3LIST OF VEHICLES TO BE USED IN COMBINED OPERATIONS

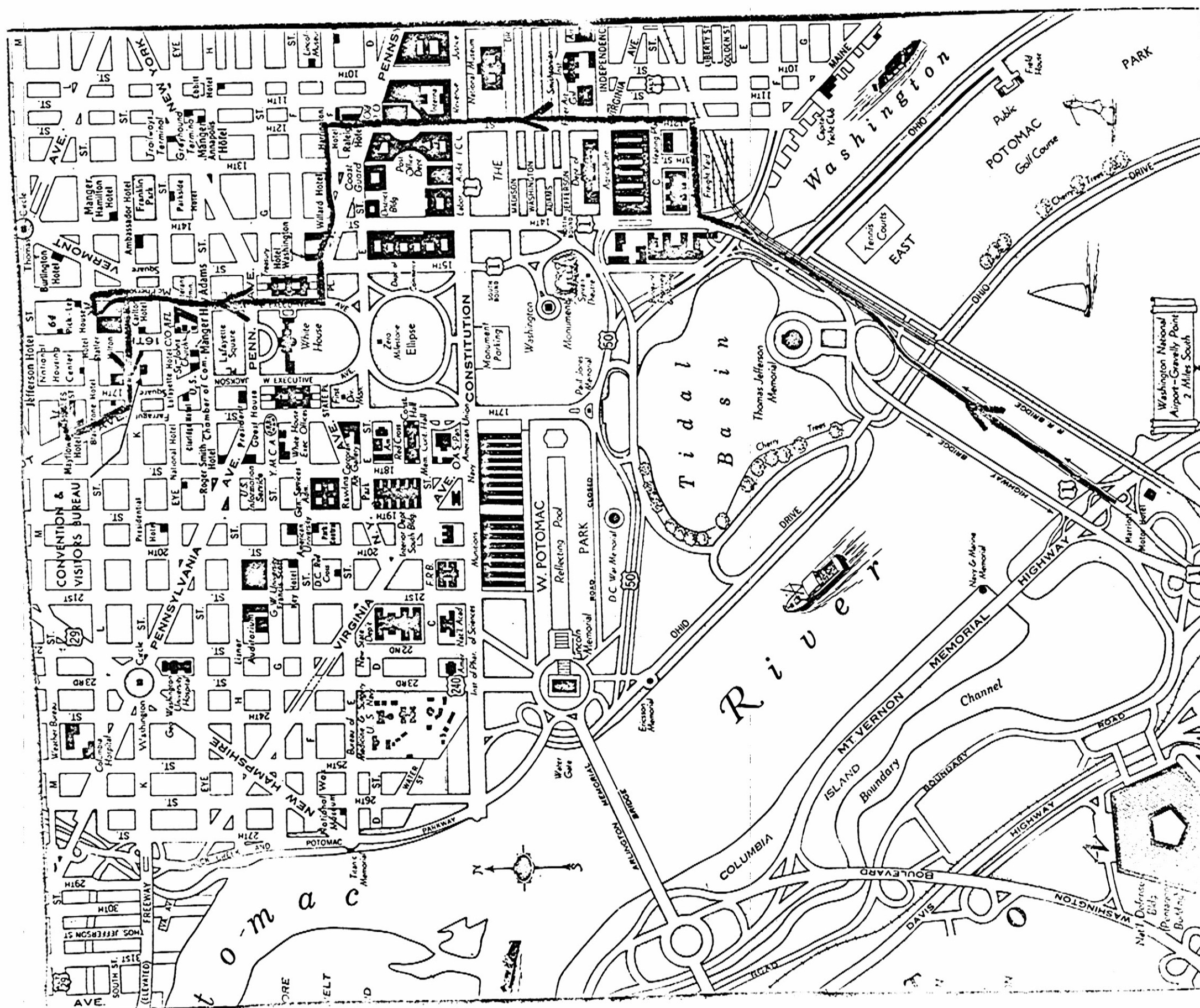
<u>Quantity</u>	<u>Make</u>	<u>Model</u>	<u>Year</u>	<u>Seating Capacity</u>	<u>Air-Conditioned (Yes or No)</u>
Taxicabs					
30	Plymouth	Savoy	1960	5	No
56	Checker	A-9L	1961	5	No
86					
Limousines					
5	Cadillac	Fleetwood	1957	7	Yes
1	Cadillac	Fleetwood	1957	7	No
3	Cadillac	Fleetwood	1959	7	Yes
13	DeSoto	Firedome	1957	7	No
15	DeSoto	Firedome	1958	7	No
5	DeSoto	Firedome	1959	7	No
5	Checker	A-9L	1961	5	No
47					

EXHIBIT No. 4

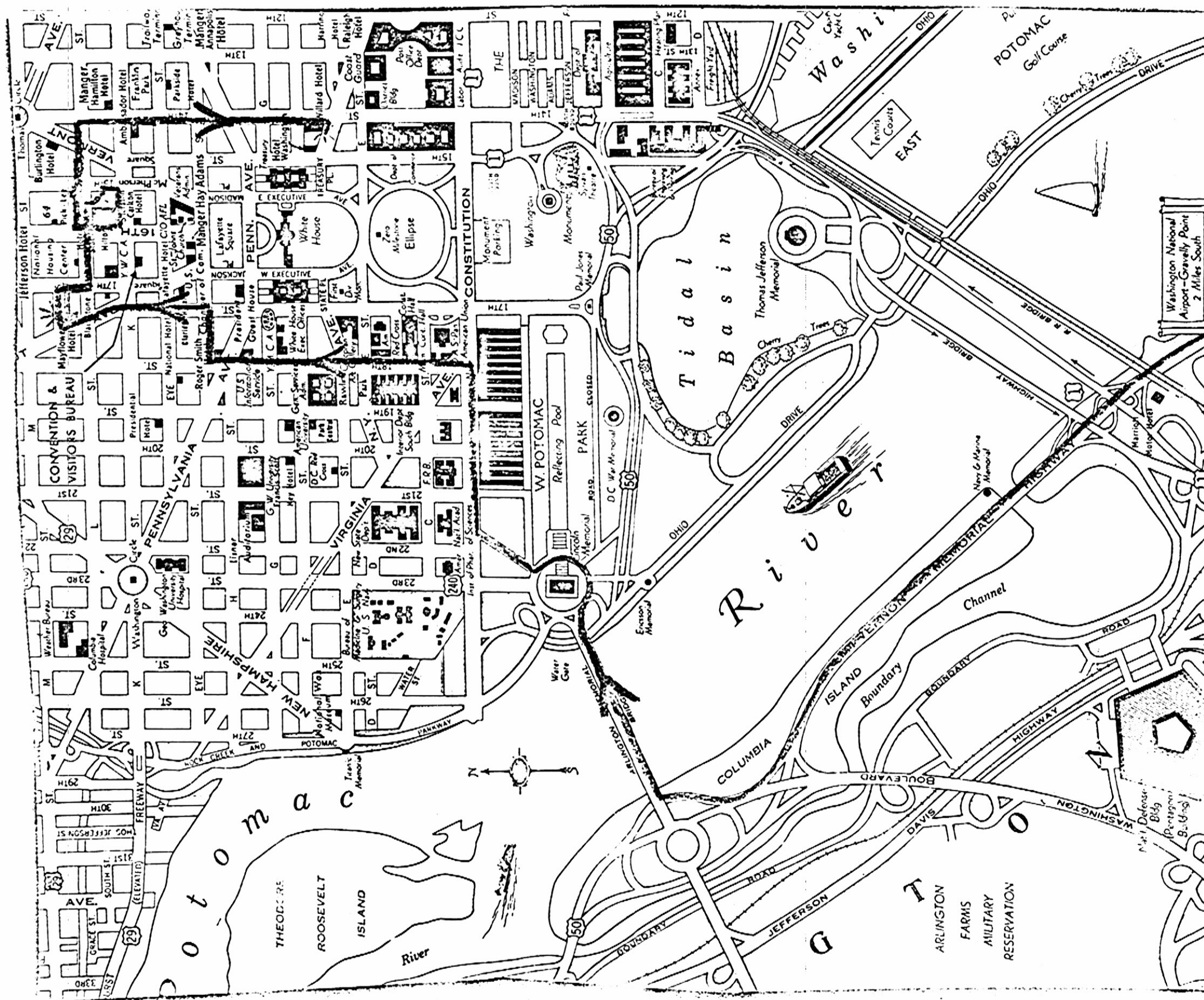
Applicant serves the entire Metropolitan Area under the jurisdiction of this Commission with the various types of service for which authority is sought.

Maps showing established routes as of March 22, 1961, are attached hereto.





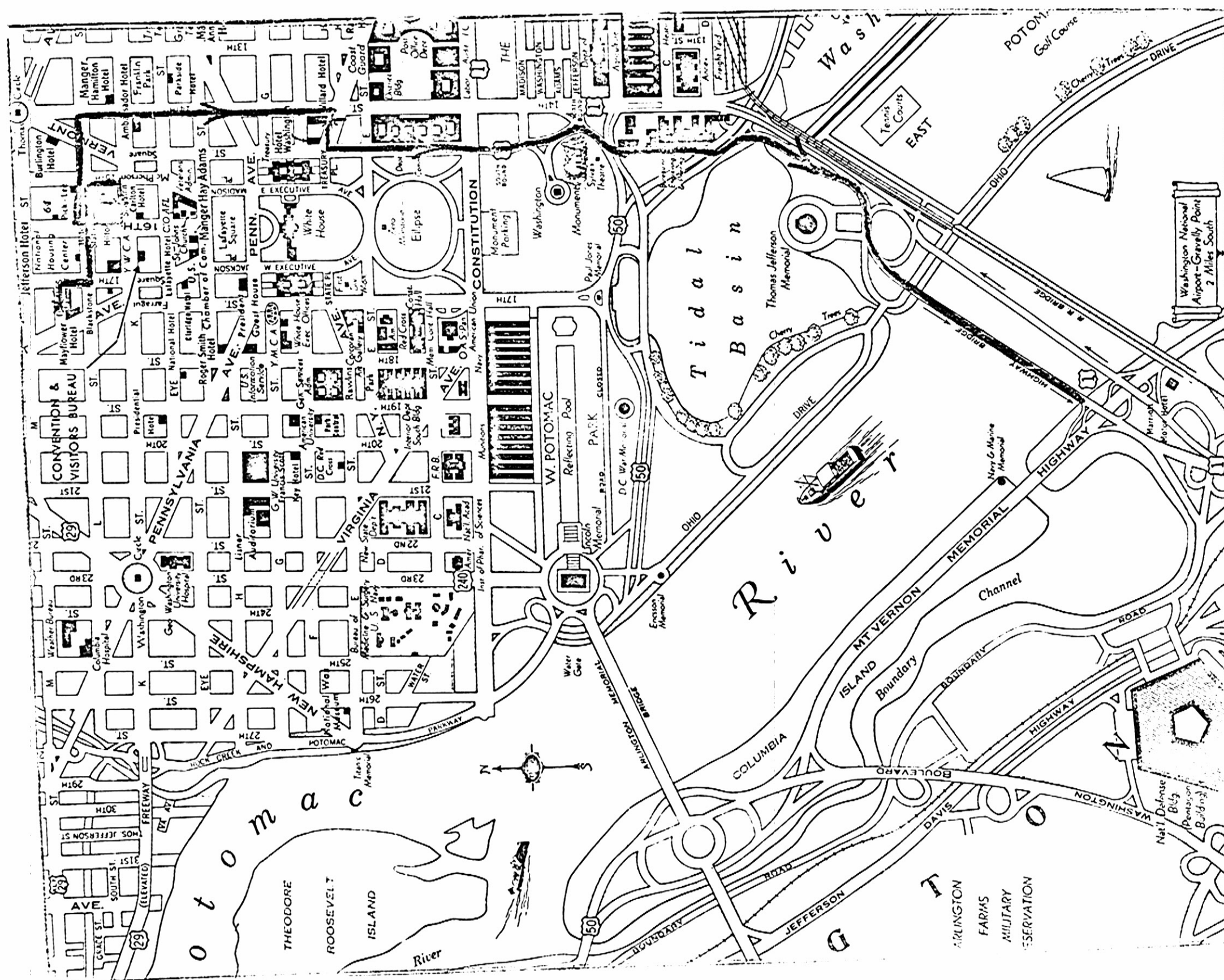
Route from Washington National Airport via 14th Street Bridge making intermediate stops at (1) Willard, (2) Downtown Terminal, (3) Statler-Hilton, and (4) Mayflower, as designated by bold red line.



Route from Washington National
Airport via Memorial Bridge
making intermediate stops at
(1) Mayflower, (2) Downtown
Terminal, (3) Statler-Hilton,
and (4) Willard, as designated
by bold red line.

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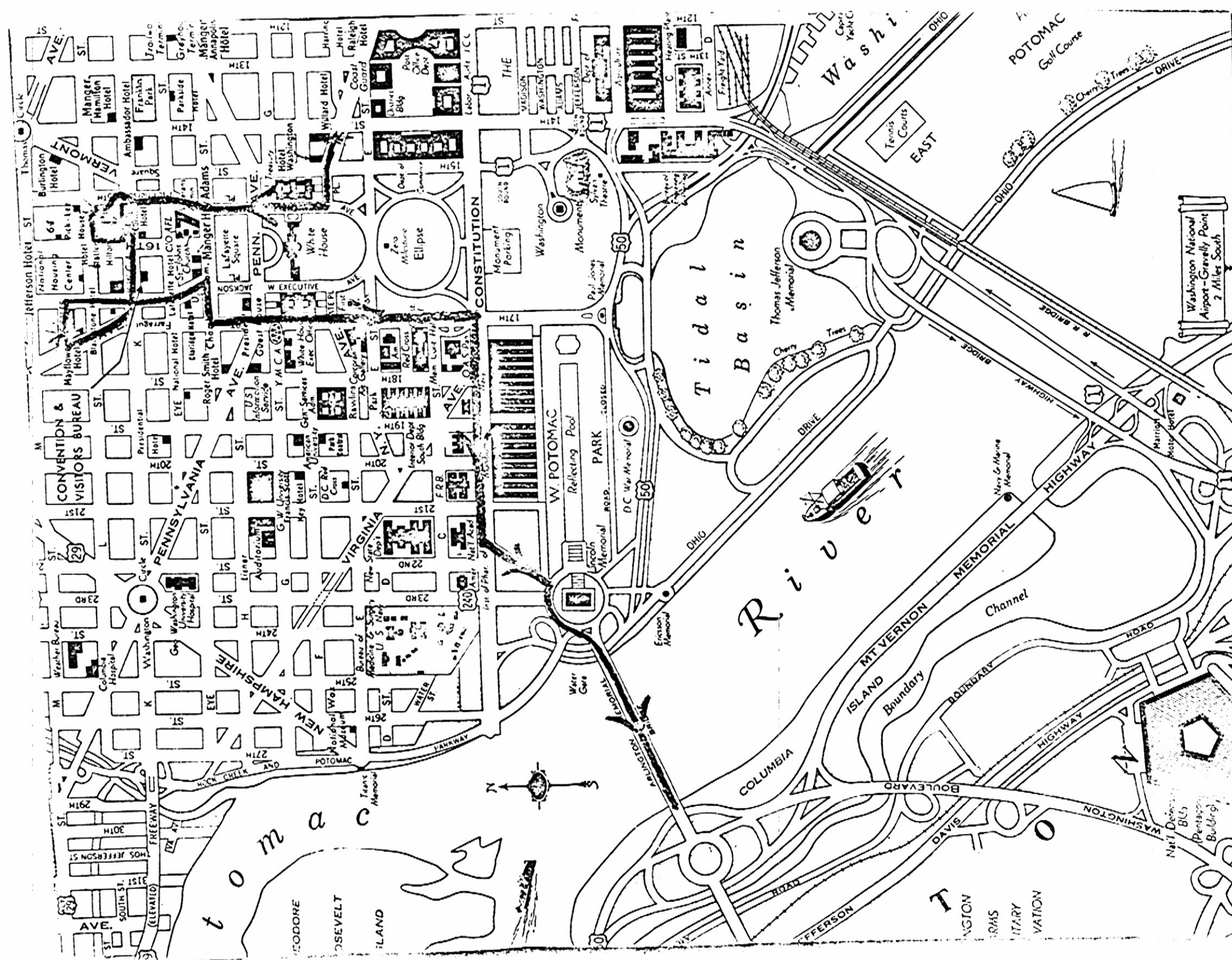
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Route from Downtown Washington via 14th Street Bridge making intermediate stops at (1) Mayflower, (2) Downtown Terminal, (3) Statler Hilton, and (4) Willard, as designated by bold red line.

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from the original bound volume



Route from Downtown Washington via Memorial Bridge making intermediate stops at (1) Willard, (2) Statler-Hilton, (3) Downtown Terminal, and (4) Mayflower, as designated by bold red line.

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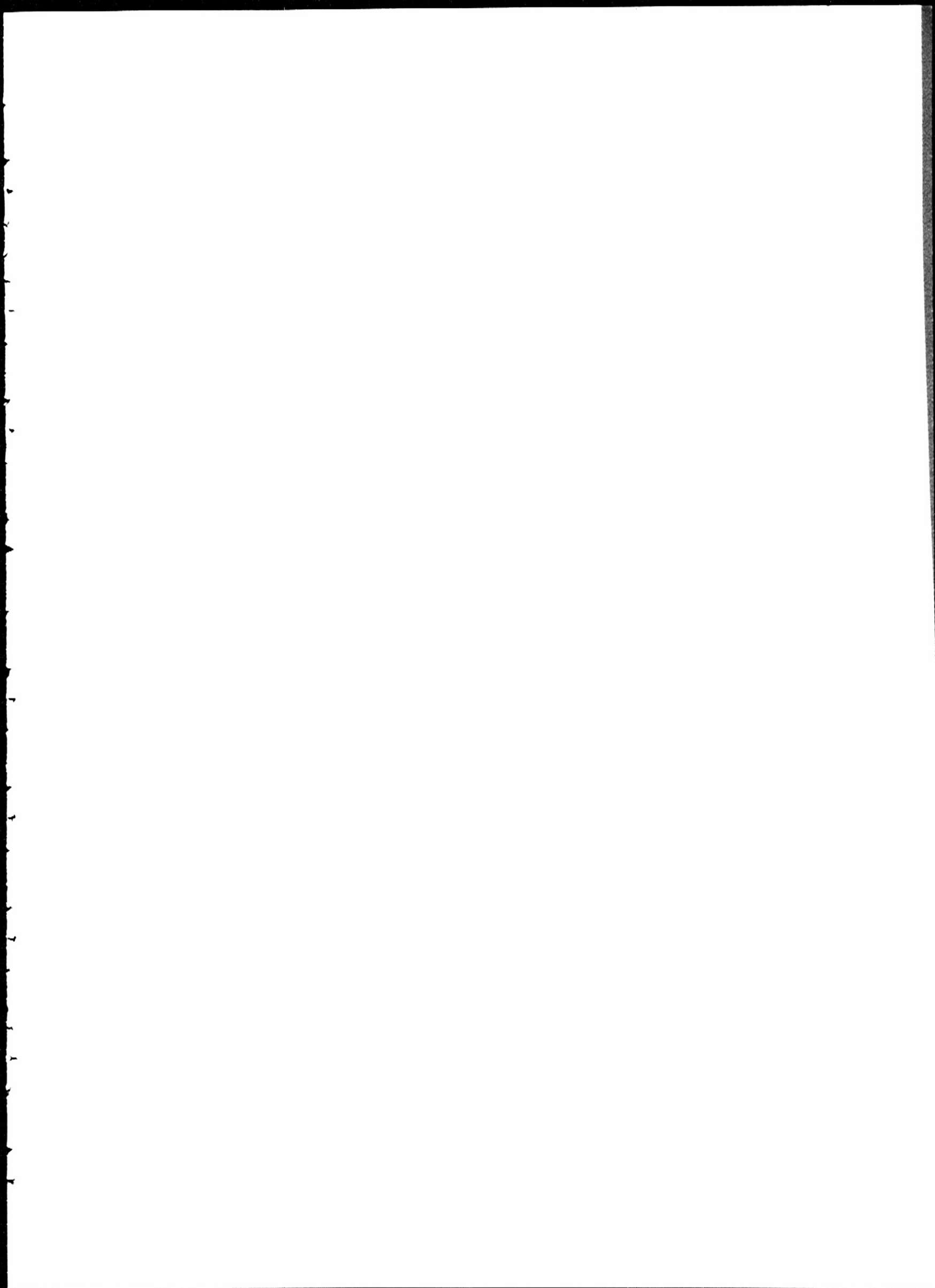


EXHIBIT "A"

CURRENT
AIRPORT TRANSPORT, INC.
AIRPORT TRANSPORT, INC. OF VIRGINIA
TARIFF
EFFECTIVE SEPT. 1, 1957

GROUP RIDING TO AND FROM AIRPORT

ZONES	<u>One</u>	<u>Two</u>	<u>Three</u>	<u>Four</u>	<u>Five</u>
RATES (per passenger)	\$1.20	\$1.60	\$1.85	\$2.25	\$2.25
Unaccompanied Baggage	1.00	1.20	1.40	1.70	1.70

CREW - SCRIP - SERVICE RATES

	<u>Zone One*</u>	<u>Marriott Motor Hotels</u> <u>Twin</u>	<u>Key</u>
CREW	\$.80	\$.75	\$1.20
SCRIP	1.00	.75	1.50
SERVICE PASSES	.35	--	--

* All other Zones regular rates are charged.

The scrip rates are for limousines or cabs on tickets. Where a passenger takes a cab on the meter and later presents scrip for payment, the driver must collect the difference between the scrip and meter fare. The driver's name, number and amount must be shown on all scrip before it will be honored.

MARYLAND

Metropolitan Area - Group riding - Use last D.C. zone fare plus 50¢ per mile over D.C. line.

Out of Metropolitan Area -- Flat rate on both limousines and cabs (see deskman for fare).

VIRGINIA

Metropolitan Area- Cabs will be used exclusively. Meters will be used for both outgoing and incoming trips except when used for group riding, then estimate cab fare and reduce by 50¢ per passengers.

Out of Metropolitan Area -- Flat rate on both limousines and cabs (see deskman for fare).

UNACCOMPANIED BAGGAGE

DISTRICT OF COLUMBIA - See zone rate schedule.

MARYLAND - Metropolitan Area - Use last zone rate for baggage plus
50¢ per mile over D.C. line.

Out of Metropolitan Area - Same as passenger rate.

VIRGINIA - Metropolitan Area - Use meter on return trip.

Out of Metropolitan Area - Same as passenger rate.

CHILDREN'S RATE

Under six years, no charge. Six through twelve, one-half fare. Over twelve, full fare.

CHARTER OR SIGHTSEEING

Metropolitan Area only:

LIMOUSINE: \$6.00 each hour. Minimum - 1 hour. For fraction
of hour. Less than 1/2 hour - \$3.00
Over 1/2 hour - \$6.00.

TAXICAB: \$5.00 each hour. Minimum - 1 hour. For fraction
of hour: Less than 1/2 hour - \$2.50
Over 1/2 hour - \$5.00

Trips out of Metropolitan Area, get flat rate charge from Dispatcher or
Deskman.

TAXICAB METERED RATES

\$.30 for first 3/4 mile

\$.10 each additional 1/4 mile

\$.60 for each additional passenger

\$.10 each 1-1/2 minutes' waiting time.

PETITION FOR INTERVENTION

HENRY G. BARTSCH d/b/a AIRPORT DISPATCHING SERVICE
of 931 G Street, N. W., Washington 1, D.C. prays leave to intervene and
participate in the above-entitled proceeding.

Petitioner's interest herein is officially noticeable from the Records of the Commission, inter alia:

WMATC FILE I.C. 239 (Complaint of Applicant v. Petitioner)

and Published Hearing of June 13, 1962 on H. J. Res. 693

(Public Law 87-767 approved October 9, 1962)

Petitioner's representations in said File No. I.C. 239 and June 13, 1962 hearing are adopted by reference and here severally subscribed on Oath. A Motion to Calendar and To Dismiss the Application with prejudice is annexed and is also certified on Oath to be interposed in good faith and not for purpose of delay.

Respectfully Submitted,

HENRY G. BARTSCH
d/b/a Airport Dispatching Service
931 G Street, N. W., Wash. 1, D.C.
DI-7-1450

[Jurat dated October 19, 1962]
[Certificate of Service]

MOTION TO CALENDAR APPLICATION FOR
HEARING AND/OR TO DISMISS SAME WITH
PREJUDICE.

The intervenor HENRY G. BARTSCH d/b/a AIRPORT DISPATCH-
ING SERVICE, 931 G Street, N. W., Washington 1, D.C. hereby notes
objection to the above-entitled application and respectfully moves this
Honorable Commission that said application be proceeded with, i.e.:
forthwith calendared for hearing and/or dismissed with prejudice.

THE RECORD SHOWS, AND IT IS RESPECTFULLY SUBMITTED:

1. Application No. 46 does not affirmatively establish that the applicant(s) were "bona fide engaged in (any) transportation subject to this Act on the effective date" March 22, 1961.
2. Though the applicant(s) stand mute, the Commission must take Notice of Title 47, sec. 2331(b) of the D.C. Code, and of P.U.C. Orders Nos. 2324, 2600 and 2622.

Respectfully submitted,

HENRY G. BARTSCH d/b/a AIRPORT DISPTACHING
SERVICE

10/10/62

AMENDED DESCRIPTION OF OPERATING
AUTHORITY APPLIED FOR

By the above-entitled application as hereby amended, Applicant seeks an appropriate certificate of public convenience and necessity authorizing it to provide the various transportation services specified below:

I. Passengers and their baggage in special operations service, over irregular routes, between the Washington National Airport, on the one hand, and points in the Washington Metropolitan Area Transit District, on the other, subject to the following restriction:

Restriction - Restricted to passengers having a prior or subsequent movement by air to or from the Washington National Airport.

II. Passengers and their baggage in charter service, over irregular routes, between the Washington National Airport, on the one hand, and points and places in the Washington Metropolitan Area Transit District, on the other, subject to the following restriction:

Restriction - Restricted to passengers having a prior or subsequent movement by air to or from the Washington National Airport.

III. Passengers and their baggage, limited to not more than seven passengers, not including driver, in any one vehicle, in special operations, in round trip or sightseeing tours, restricted to traffic originating or terminating at the point specified, over irregular routes:

From Washington, D. C. to Mt. Vernon, Virginia.

(The above-described authority corresponds to certificated authority previously issued to Airport Transport, Inc. by the Interstate Commerce Commission in Docket MC-103113).

IV. Passengers and their baggage, limited to not more than seven passengers, not including driver, in any one vehicle, in round trip charter operations over irregular routes:

From Washington, D. C. to points and places in the Washington Metropolitan Area Transit District.

(The above-described authority corresponds to certificated authority previously issued to Airport Transport, Inc. by the Interstate Commerce Commission in Docket MC-103113.)

This is a certified true copy of the document filed in the titled case before the Washington Metropolitan Area Transit Commission

/s/ Robert W. Pully
Chief Clerk
Washington Metropolitan Area Transit
Commission

ORDER NO. 283

Appearances as shown in prior orders.

By order No. 264, the Commission granted reconsideration of its Order No. 251, pursuant to applications for reconsideration filed by various parties of record. The Commission, having reconsidered the record, the applications for reconsideration and the oral arguments heard thereupon, is of the opinion that certain findings and conclusions reached in Order No. 251 should be modified.

By Order No. 251, among other things, the Commission granted Airport Transport, Inc., applicant herein, a certificate of public convenience and necessity as follows:

(A) NON-SCHEDULED, IRREGULAR ROUTES, SPECIAL
AND CHARTER OPERATIONS:

Passengers and their baggage between the Washington National Airport on the one hand, and points and places in the District of Columbia and that portion of Maryland, situated within the Washington Metropolitan Area Transit District on the other, restricted to passengers and aircraft crews having a prior or subsequent movement by air to or from the Washington National Airport.

(B) SCHEDULED, IRREGULAR ROUTE OPERATIONS:

Passengers and their baggage from the Statler Hotel,

Mayflower Hotel, Willard Hotel, and the downtown airport terminal, Washington, D. C., to the Washington National Airport, restricted to passengers and aircraft crews having a prior or subsequent movement by air to or from the Washington National Airport.

In granting reconsideration, the Commission called for oral arguments on the two following issues:

- (1) Whether or not certain operations being conducted by Airport Transport, Inc., particularly those operations from Montgomery County and from certain downtown hotels, including the downtown airport terminal, to the Washington National Airport, are in fact, scheduled operations;
- (2) Whether or not the group riding limousine service provided by Airport Transport, Inc., is subject to the certificate jurisdiction of this Commission.

Upon reconsideration of the entire record, including oral arguments of counsel, the Commission now finds that the operations of applicant from points in Montgomery County, the downtown hotels and the downtown terminal to the Washington National Airport are not scheduled operations. No schedules are posted; the operations are over irregular routes; no specific arrival time is guaranteed; and, perhaps, more important, on numerous occasions, the service is not operated. Mere departure time without these other ingredients is insufficient, under the facts in this record, to warrant a finding of "scheduled operations." These operations may be more properly classified as mere adjustments in service which was being provided by applicant on and before March 22, 1961.

The Commission held in Order No. 251 that applicant's group-riding limousine service was a bona fide taxicab service. Upon reconsideration of the record, the applications for reconsideration and oral arguments heard thereupon, the Commission now finds that the group-riding limousine service of applicant is not a bona fide taxicab service, in that the transportation is not directed by the passengers. Thus, such

transportation does not come within the definition of Section 2(d) of the Compact, and therefor it is not exempt from the certificate requirements of Section 4(a) of the Compact.

All findings of fact and conclusions of law of the Commission contained in Order No. 251, are hereby modified to conform to this Order.

THEREFORE, IT IS ORDERED:

(1) That the authority granted Airport Transport, Inc., by Order No. 251, is hereby set aside and held for naught.

(2) That Certificate of Public Convenience and Necessity No. 7-B be, and it is hereby, granted to Airport Transport, Inc., to transport passengers for hire as follows:

IRREGULAR ROUTES, SPECIAL AND CHARTER OPERATIONS:

Passengers and their baggage between the Washington National Airport on the one hand, and points and places in the District of Columbia and that portion of Maryland, situated within the Washington Metropolitan Area Transit District on the other, restricted to passengers having a prior or subsequent movement by air to or from the Washington National Airport.

(3) That Airport Transport, Inc., shall forthwith file with the Commission appropriate tariffs pursuant to the authority granted herein.

(4) That in all other respects, the application of Airport Transport, Inc., and Airport Transport, Inc. of Virginia, be, and the same is, hereby denied.

BY DIRECTION OF THE COMMISSION:

/s/ Delmer Ison
DELMER ISON
Executive Director

APPLICATION FOR RECONSIDERATION
OF ORDER 283

Henry G. Bartsch, d/b/a Airport Dispatching Service, respectfully demands reconsideration, modification and recession of WMATC Order No. 283 served herein on July 3, 1963.

The authority purportedly granted by new Order No. 283 is the same as that provided by mandate part "A" of Order No. 251 which it supercedes, yet broadened to embrace "scheduled" operation such as previously restricted by part "B" of the Mandate in Order No. 251.

Under these circumstances, each of the grounds for reconsideration enumerated I, II, III, IV, V, VI, VII and VIII in the Application for Reconsideration of Order No. 251, filed by the undersigned on May 27, 1963, are appropriately all herein adopted by reference and are re-urged against Order No. 283 as though here stated in extenso.

Further, as ground for reconsideration preliminary to appellate review: --

IX. The undersigned protestant again refers to and demands the transfer and judicial noticing of the records of the applicants in Docket File No. 3307 (with subs) of the Public Utilities Commission of the District of Columbia under the provisions of Sections 21 and 22 of the Compact, Title II, Article XII.

X. Additionally, the undersigned again asks for Commission ruling upon each of the unrul-ed-upon Motions and Exceptions made at hearing and pretrial hearing of this cause before a Hearing Officer not a member on the Commission. The withholding thereof is assignable as continued prejudicial error.

XI. The grant of "special" certification (Order 283) to the applicant Airport Transport, Inc., on off-the-record agreement with the Federal Aviation Agency is contrary to law:

1. Because the Commission has no authority to enlarge the applicant's F.A.A. Airport Concession into a certificated monopoly unrestricted in term to the remaining period of the applicant's presently-in-effect 5-year concession contract, in repugnance to Congressional

prohibition against U.S. contracts in perpetuity.

Respectfully submitted,

/s/ Henry G. Bartsch
d/b/a AIRPORT DISPATCHING
SERVICE

* * *

DUE: August 2, 1963.

[Jurat dated August 2, 1963]

[Service]

APPLICATION FOR RECONSIDERATION
OF ORDER NO. 251

The protestant-intervenor, Henry G. Bartsch d/b/a/ AIRPORT DISPATCHING SERVICE respectfully requests that the full Commission reconsider, modify, and rescind Commission-directed Order No. 251 of April 25, 1963 under more definite Findings of Fact and Conclusions of Law.

The following errors are enumerated and severally assigned as grounds for such reconsideration and revision:

IN THE MANDATE, page 21 of Order No. 251

- I SECTION 1-A PURPORTS TO ORDER COMMISSION GRANT OF AUTHORITY FOR NON-SCHEDULED TRANSPORTATION OVER UNSPECIFIED ROUTES IN VEHICLES OF 8 (or less) PASSENGER CAPACITY.

The Compact (Article XII, Section 1-c) bars the Commission from assumption of jurisdiction to grant or withhold operating authority for vehicles of 8 (or less) passenger capacity engaged in non-scheduled transportation.

The Commission has the duty to confine its proceedings and Orders to the area wherein it is authorized to exercise jurisdiction. It should not impose upon the United States Circuit Courts of Appeal the burden of interpreting and revising needlessly-sprawled and indefinite Transit Commission Orders.

AT THIS STAGE, therefore, your protestant requests amendment of Order No. 251 to confine its Mandate, section 1-A, to the Commission's authorized jurisdictional area of transportation operations in vehicles of MORE THAN 8 passenger capacity.

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II SECTION 1-A WRONGFULLY ORDERS THE GRANT OF A "GRANDFATHER RIGHTS" CERTIFICATE FOR BUS OPERATION TO AN APPLICANT WHOM THE COMMISSION MUST ADMINISTRATIVELY NOTICE WAS NOT BONA FIDE ENGAGED IN BUS OPERATION ON THE CRITICAL DATE PRESCRIBED.

The Record in this proceeding shows (Tr. page 95, lines 8-11; and pages 235, lines 12-15) that the only more than 8 passenger capacity vehicles applicant claims to have operated from May, 1959 through March, 1961 were owned by, and rented from, AIRLINE TRANSPORT, Inc., a distinct company.

The Commission must take administrative notice of the jurisdiction and authority of the Public Utilities Commission of the District of Columbia under the D.C. Code, Title 47, sections 2331(b)(c) and although (as stated at the center of Page 4 of the Opinion served with Order No. 251) the Commission "was not required by the Compact to hold a hearing on the application", it is required by the Compact to have record of, and give full faith and credit to "All rules, regulations, orders, decisions or other action prescribed, issued, made or taken by ---- the Public Utilities Commission of the District of Columbia" which were in effect March 22, 1961, and "pertain to matters which by this Act are placed under the jurisdiction of the latter (Washington Metropolitan Area Transit) Commission".

The Official Docket No. 3307/ with subs/ of the D.C. Public Utilities Commission shows that AIRPORT TRANSPORT, Inc. was on March 22, 1961 (and for some 15 years preceding that date) knowingly and agreeably to it, UNLICENSED, unauthorized and barred by the D. C. Code Title 47, sections 2331 (b)(c) from operating ANY vehicle for hire in the District of Columbia having a capacity of more than seven (7) passengers.

And this Commission must take Official notice of D.C. Public Utilities Commission Orders Nos. 4541 and 4802 "In the matter of Operation of Buses within the District of Columbia by AIRLINE TRANSPORT, Inc.", which from May 29, 1959 through September 16, 1962 authorized and

directed AIRLINE TRANSPORT, INC. to operate its buses over a specified route and "not deviate from the route described except when required by street work, fire or other emergency". (D.C. PUC Docket No. 3619)

And this Commission must take Official Notice as a matter of common knowledge that any route embracing any part of the Washington National Airport Reservation and any part of the District of Columbia Street and Highway system involved in the mandate of WMATC Order No. 251 would materially "deviate" from the specified route described in said PUC Order No. 4541 which was in full force and effect on March 22, 1961.

Are we to assume that the Washington Metropolitan Area Transit Commission concludes as a matter of law that a District of Columbia Bus Operation which was prohibited to the corporate OWNER of buses by express order of the D.C. Public Utilities Commission acting within its statutory authority (D.C. Code Title 47/2331(b)) could be bona fide conducted by the President, Director and Stockholder of that corporation operating as President, Director and Stockholder of ANOTHER corporation having no D.C. Public Utilities Commission authority whatever to operate Buses in the District of Columbia?

It would be appropriate that this Commission (in considering the question of the bona fides of the applicant) bear in mind that the 1961 PUC unauthorized, unlicensed and untaxed, irregularly-routed AIRPORT TRANSPORT corporation's unscheduled operation of 40-passenger AIRLINE TRANSPORT corporation Buses on the Streets and Highways of the District of Columbia was undertaken by the President, Director and Owner of these two corporations who, in this Application No. 46 (see Exhibit #8) took solemn oath that he "devoted his full executive efforts to the business of the (AIRPORT TRANSPORT) corporation and its wholly-owned subsidiary, Airport Transport Incorporated of Virginia" and certified (under the requirements of this Commission's Regulation 52-01, 02(e) that there was no other company "under common control or affiliated with" the named applicants.

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- III SECTION 1-B OF THE MANDATE ORDERS GRANT OF "GRANDFATHER RIGHTS" FOR A SCHEDULED, IRREGULAR ROUTE HOTEL AND TERMINAL TO WASHINGTON NATIONAL AIRPORT TRANSPORTATION OPERATION NEITHER APPLIED FOR NOR OPERATED BY THE GRANTEE.

Reference is made to the Record (Tr. page 327, lines 13-15):

"MR. MAJOR: I can assure you that it is not my thought or intention that we are applying for any scheduled or regular route service for any points within the area embraced."

* * * *

- IV SECTION I-B OF THE MANDATE ORDERS GRANT OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY REQUIRING OPERATION OF A SCHEDULED WASHINGTON NATIONAL AIRPORT TRANSPORTATION SERVICE IN CONFLICT WITH, AND STATE-AGENCY IMPAIRMENT OF, GRANTEE'S AIRPORT USE CONTRACT WITH THE UNITED STATES, IN REPUGNANCE TO THE CONSTITUTION OF THE UNITED STATES, ARTICLE I, SECTION 10; AND ARTICLE IV, SECTION 1.

Article XII, Section 3 of the Compact states:

"It shall be the duty of every carrier to furnish transportation subject to this Act as authorized by its certificate ----".

AIRPORT TRANSPORT contract for 1962-1967 Washington National Airport Use (of record herein as "Supplemental Exhibit #2 filed June 20, 1961) expressly restricts its operations to UNSCHEDULED service. Applicant executed this Contract and agreed to the restrictions of its Article I, sec. A and A-1, and Article VI, sec. A on August 25, 1960, three months before this Commission was created by legislative Act of the States of Maryland and Virginia.

* * * *

V SECTION 1-B OF THE MANDATE ORDERS GRANT OF COMMISSION AUTHORITY FOR SCHEDULED TRANSPORTATION IN VEHICLES OF 8 (or less) PASSENGER CAPACITY OVER IRREGULAR ROUTES TO PASSENGER-DIRECTED DESTINATIONS ANYWHERE ON THE MILE-SQUARE WASHINGTON NATIONAL AIRPORT RESERVATION.

It must be administratively noticed that there are FOUR distinct passenger Terminals on the Airport: NORTH Terminal, MAIN Terminal, MATS Terminal and BUTLER Terminal. And there are six widely spaced "Freight Terminals" where persons with and without proximate air travel go to leave and pick-up Air Freight and Express shipments.

Also on the Airport reservation, remote from each other and from the main passenger terminal, are the U.S. Weather Bureau Office, the U.S. Customs Office, and the District Offices of the U.S. Corps of Engineers which latter occupies a two block long building of its own having seven wings with distinct entrances.

The thousands of passengers who each day engage public transportation in the Hotel District of downtown Washington are not "dumped out" of limousines at a fixed terminus. Each is transported to the building entrance of his choice. Washington National Airport can no more be categorized as a fixed terminus than can Washington Taxicab Zone No. 1, or Alexandria, or Falls Church be so connoted.

Section 1-C of the Compact, Article XII bars this commission from assumption of jurisdiction to grant or withhold operating authority for vehicles of 8 (or less) passenger capacity engaged in irregular route transportation to destinations which are at the direction of the individual passengers.

* * * *

VI SECTION 1-B ORDERS GRANT OF A "GRANDFATHER RIGHT" CERTIFICATE FOR SCHEDULED BUS OPERATION TO A GRANTEE WHOM THE COMMISSION MUST RECOGNIZE WAS NOT ENGAGED IN SCHEDULED BUS OPERATION ON THE CRITICAL DATE.

The legal impropriety of applicant's claim to operation of Airline Transport Buses has been discussed supra. That discussion is here adopted, as well.

The Record (Tr. pp 95, 235) establishes that the only more than 8 passenger vehicles claimed to have been operated by Applicant in 1961 were AIRLINE Transport Inc. buses rented in emergencies. Applicant's Exhibit No. 21A admitted in evidence at hearing February 12, 1963 shows just ONE (1) Bus trip from the Statler Hotel to The Washington National Airport during the entire year 1961. According to this "Summary of Bus Movements Operated by Airport Transport, Inc. in 1961", there were no trips whatever from the Mayflower Hotel, The Willard Hotel, nor from a "downtown Airport terminal." The only trip from the Statler occurred, significantly, eight months after March 22, 1961.

VII SECTION 2 OF THE MANDATE ORDERS THE FORTHWITH FILING OF NEW TARIFFS APPROPRIATE TO THE OPERATING AUTHORITY GRANTED YET PERMITS THE SPECIAL AND DISCRIMINATORY TARIFFS HITHERTO APPROVED FOR APPLICANTS "TAXICAB" OPERATIONS TO STAND UNCHANGED.

REFERENCE:

WMATC Tariff No. 7, effective January 1, 1963 allows the herein-adjudicated-to-be-uncertifiable Taxicab and Group Taxicab and Limousine Operations special rates which are different from and denied to others for identical service. This is a denial of equal protection of the law guaranteed by the Constitution of the United States, Amendment XIV, sec. 1 and the provisions of Title 42, section 1981 of the United States Code.

VIII SECTION 3 OF THE MANDATE FAILS TO DISMISS THE APPLICATION IN ITS ENTIRETY.

The Commission erred in honoring UNSWORN amendment of Application as "seasonable" after laches of nearly two years. The Commission erred in failing to pass upon the Motions brought by the Protestants and in failing to rule upon inclusion, as part of the Record for Appellate Review, of each of the requests for such inclusion as shown by the record herein.

Respectfully submitted,

HENRY G. BARTSCH
d/b/a AIRPORT DISPATCHING SERVICE
* * *

DUE: May 27, 1963

[Jurat dated May 27, 1963]

[Service]

PUBLIC UTILITIES COMMISSION
OF THE DISTRICT OF COLUMBIA

Order No. 4541

May 29, 1959

IN THE MATTER OF)

Operation of busses by)
Airline Transport, Inc.)

P.U.C. No. 3619

By application dated May 21, 1959, Airline Transport, Inc., requested authority to conduct routed bus operations on fixed schedules between Washington, D.C. and Friendship International Airport, Maryland, transporting airline passengers to and from that Airport. Inasmuch as the service is scheduled to make connections with airline service, the Commission is of the opinion that the requested authority for routed bus operation is in the public interest. Therefore,

IT IS ORDERED:

Section 1. That Airline Transport, Inc., is hereby authorized and directed to operate routed bus service over the following described routes:

OUTBOUND: From the off-street terminal at 1508 L Street, N.W., east on L Street to Massachusetts Avenue, east on Massachusetts Avenue and Mount Vernon Place to New York Avenue, east on New York Avenue to the Baltimore-Washington Expressway at the District of Columbia Line.

INBOUND: From the Baltimore-Washington Expressway at the District of Columbia Line, west on New York Avenue to L Street, N.W., west on L Street to 9th Street, south on 9th Street to K Street, west on K Street to 15th Street, north on 15th Street to off-street terminal entrance at the southwest corner of 15th and L Streets, N.W.

Section 2. That no intra-District passengers shall be carried on the bus service herein authorized.

Section 3. That the company shall file with the Commission a

copy of all schedules in force in the District of Columbia and shall notify the Commission at least 48 hours in advance of any change in schedules.

Section 4. That busses shall not deviate from the route herein described except when required by street work, fire, or other emergency. Where deviation is necessary, busses shall be operated over such route as may be directed by detour signs, police instructions or order from the Commission.

Section 5. That this order become effective May 29, 1959.

A TRUE COPY:

Chief Clerk

By the Commission:

Norman B. Belt
Executive Secretary

In accordance with the provisions of the Act of Congress, approved February 27, 1931, this order has been referred to the Joint Board created by said Act and has been adopted by said Joint Board.

A. C. Welling
Brig. Gen., U.S.A.
Chairman of the Joint Board

Order No. 4802

August 31, 1962

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AMENDING ORDER NO. 4541

Due to a change in the location of the off-street terminal used by Airline Transport, Inc. in bus operations between Washington, D.C., and Friendship International Airport, Maryland, it is necessary to change its route within the District of Columbia. Therefore,

IT IS ORDERED:

Section 1. That Section 1 of Order No. 4541 be amended, and it is hereby amended, by changing the route description to read as follows:

OUTBOUND: From the off-street terminal at the northwest corner of 12th and K Streets, Northwest, north on 12th Street to L Street

and easterly on L Street, Massachusetts Avenue, Mt. Vernon Place, New York Avenue and the Baltimore-Washington Parkway to the District of Columbia Line.

INBOUND: From the District of Columbia Line at the Baltimore-Washington Parkway, westerly on the Baltimore-Washington Parkway, New York Avenue and L Street to 9th Street, Northwest, south on 9th Street to K Street and west on K Street to the off-street terminal at the northwest corner of 12th and K Streets.

Section 2. That this order become effective September 16, 1962.

A TRUE COPY:
Chief Clerk

By the Commission:
Joseph S. Greco
Executive Secretary

August 31, 1962

In accordance with the provisions of the Act of Congress, approved February 27, 1931, this order has been referred to the Joint Board created by said Act and has been adopted by said Joint Board.

F. J. Clarke
Brig. Gen., U.S.A.
Chairman of the Joint Board

BEFORE THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION
WASHINGTON, D.C.

Order No. 356

Served April 17, 1964

IN THE MATTER OF:

Application of
Airport Transport, Inc.,
for a Certificate of
Public Convenience and
Necessity (grandfather)

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Application No. 46
Docket No. 34

Henry G. Bartsch, d/b/a Airport Dispatching Service, has filed an application for reconsideration of Order No. 283, which granted a certificate of public convenience and necessity unto Airport Transport,

Inc. Upon consideration of said application, and oral argument on the matters contained therein, the Commission is of the opinion that said application for reconsideration should be denied.

THEREFORE, IT IS ORDERED that the application for reconsideration of Order No. 283 by Henry G. Bartsch, d/b/a Airport Dispatching Service, be, and it is hereby, denied.

BY THE COMMISSION:

/s/ H. Lester Hooker
VICE CHAIRMAN

W.M.A.T.C. Exhibit No. 21A

SUMMARY OF BUS MOVEMENTS
OPERATED BY AIRPORT TRANSPORT, INC.
IN 1961

<u>DATE</u> <u>1961</u>	<u>NO. OF</u> <u>COACHES</u>	<u>ORIGIN</u>	<u>DESTINATION</u>	<u>TYPE OF</u> <u>MOVEMENT</u>
Jan 4	5	WNA	Annapolis	Cash Fares
Jan 14	2	WNA	Norfolk	Charter
Jan 17	2	WNA	Dwtn. Wash.	Charter
Jan 18	2	WNA	Sheraton Park	Charter
Jan 19	1	WNA	Union Stat.	Indiv. Fares
Jan 19	1	WNA	Union Stat.	Indiv. Fares
Jan 20	2	WNA	Union Stat.	Indiv. Fares
Jan 20	2	WNA	Baltimore	Charter
Jan 20	1	WNA	Union Stat.	Indiv. Fares
Jan 20	1	WNA	Union Stat.	Indiv. Fares
Jan 20	1	WNA	Union Stat.	Indiv. Fares
Jan 20	1	WNA	FIA	Charter
Jan 22	1	16th St.	WNA	(\$40) Uncertain
Jan 25	1	WNA	FIA	Charter
Jan 26	1	WNA	Union Stat.	Indiv. Fares
Jan 26	1	WNA	Union Stat.	Indiv. Fares
Jan 26	1	WNA	WNA	Indiv. Fares
Jan 26	1	WNA	Baltimore	Charter
Jan 28	1	WNA	FIA	Charter
Feb 4	1	WNA	FIA	Indiv. Fares
Feb 4	1	WNA	Union Stat.	Charter
Feb 4	1	WNA	Union Stat.	Indiv. Fares
Feb 4	1	WNA	Union Stat.	Indiv. Fares
Feb 4	1	WNA	Union Stat.	Indiv. Fares
Feb 4	1	WNA	Franklin Park Hotel	Uncertain
Feb 4	1	WNA	Franklin Park Hotel	Uncertain
Feb 4	1	WNA	Union Stat.	Indiv. Fares
Feb 4	1	WNA	Union Stat.	Indiv. Fares
Feb 4	2	WNA	FIA	Charter

<u>DATE</u> <u>1961</u>	<u>NO. OF</u> <u>COACHES</u>	<u>ORIGIN</u>	<u>DESTINATION</u>	<u>TYPE OF</u> <u>MOVEMENT</u>
Feb 8	1	WNA	FIA	Charter
Feb 9	1	WNA	Ky Br Motel	Charter
Feb 9	1	WNA	Ky Br Motel	Charter
Feb 17	1	WNA	FIA	Charter
Feb 17	1	WNA	FIA	Charter
Feb 18	1	WNA	Union Stat.	Charter
Feb 18	1	WNA	Aberdeen	Charter
Feb 18	1	WNA	Union Stat.	Charter
Feb 18	1	WNA	Union Stat.	Charter
Feb 19	1	WNA	New York City	Charter
Feb 22	1	WNA	Norfolk	Charter
Feb 23	1	WNA	New York City	Charter
Feb 23	1	WNA	Philadelphia	Charter
Feb 23	1	WNA	Union Stat.	Charter
Feb 24	1	WNA	New York City	Charter
Feb 25	1	WNA	New York City	Charter
Feb 26	1	WNA	FIA	Charter
Mar 1	1	WNA	Harrisburg	Charter
Mar 6	1	WNA	Franklin Park Hotel	Charter
Mar 6	1	WNA	Baltimore	Charter
Mar 6	1	WNA	Richmond	Charter
Mar 7	1	Franklin Park Hot.	WNA	Charter
Mar 8	1	WNA	Norfolk	Charter
Mar 8	1	WNA	FIA	Charter
Mar 8	1	WNA	-	Cancelled
Mar 8	1	WNA	Richmond	Charter
Mar 8	1	WNA	Parkside Hot.	Charter
Mar 27	1	WNA	Windsor Park	Charter
Mar 28	1	Windsor Park	WNA	Charter
Apr 3	1	WNA	Winchester	Charter
Apr 4	1	WNA	Southgate Mot.	Cash
Apr 6	1	WNA	FIA	Charter
Apr 12	1	WNA	FIA	Charter
Apr 21	1	WNA	Ft. Meade	Charter
Apr 27	1	WNA	As Directed	Charter
Apr 27	1	WNA	As Directed	Charter
Apr 28	1	WNA	Richmond	Charter
Apr 28	1	Natl. Press Club	WNA	Charter
Apr 28	1	Natl. Press Club	WNA	Charter
May 5	1	WNA	FIA	Charter
May 10	1	WNA	Richmond	Charter
May 11	1	WNA	Richmond	Charter
May 12	1	WNA	New York City	Charter
May 12	1	WNA	New York City	Charter
May 12	1	WNA	FIA	Charter
May 12	1	WNA	Baltimore	Charter
June 11	1	WNA	Sheraton Carlton	Charter
June 11	1	WNA	Sheraton Carlton	Charter
June 13	1	Sheraton Carlton	WNA	Charter
June 13	1	Sheraton Carlton	WNA	Charter
July 17	1	WNA	Annapolis Hot.	Charter
July 27	1	WNA	FIA	Charter
July 29	1	WNA	Burlington Ho.	Charter
Aug 5	1	WNA	FIA	Charter

<u>DATE</u> <u>1961</u>	<u>NO. OF</u> <u>COACHES</u>	<u>ORIGIN</u>	<u>DESTINATION</u>	<u>TYPE OF</u> <u>MOVEMENT</u>
Aug 15	1	WNA	Richmond	Charter
Aug 23	1		Cancelled	
Aug 23	1	WNA	FIA	Charter
Aug 24	1	WNA	FIA	Charter
Sep 1	2	WNA	Richmond	Charter
Sep 5	1	WNA	Richmond	Charter
Sep 7	1	WNA	FIA	Charter
Sep 19	1	WNA	Norfolk	Charter
Sep 30	1	WNA	Alexandria, Va.	Charter
Sep 30	1	WNA	Alexandria, Va.	Charter
Oct 9	1	WNA	FIA	Charter
Oct 11	1		Cancelled	
Oct 20	1	WNA	FIA	Charter
Nov 5	2	WNA	Williamsport, Pa.	Charter
Nov 16	2	WNA	FIA	Charter
Nov 17	1	WNA	FIA	Charter
Nov 26	1	Statler	WNA	Cash
Dec 12	3	WNA	FIA	Charter
Dec 12	1	WNA	Newport News	Charter
Dec 12	1	WNA	Richmond	Charter
Dec 16	1	WNA	FIA	Charter
Dec 17	1	WNA	Norfolk	Charter
Dec 17	1	WNA	Philadelphia	Charter
Dec 17	1	WNA	FIA	Charter
Dec 17	1	WNA	Norfolk	Charter
Dec 17	1	WNA	FIA	Charter
Dec 18	1	WNA	Baltimore	Cash & Scrip
Dec 19	2	WNA	FIA	Charter
Dec 19	2	WNA	Baltimore	Charter
Dec 19	2	WNA	FIA	Charter
Dec 23	1	WNA	FIA	Charter
Dec 23	1	WNA	Harrisburg	Charter
Dec 23	2	WNA	Norfolk	Charter
Dec 23	1	WNA	Philadelphia	Charter
Dec 23	1	WNA	Cancelled	Charter
Dec 27	1	WNA	Norfolk	Charter

Excerpts from
TRANSCRIPT OF PROCEEDINGS

60

Room 307
1801 North Moore Street
Arlington, Virginia
Monday, February 11, 1963

The above-entitled matter came on for hearing, pursuant to notice, before the Washington Metropolitan Area Transit Commission, at 9: 40 a.m., Delmer Ison presiding.

* * * *

65

MOE LERNER

was called as a witness by and on behalf of the applicant and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Major:

Q Mr. Lerner, will you give the reporter your name and --

MR. BARTSCH: Just one moment, please.

My name is Henry Bartsch.

I wish to object to the amended description of operating authority, which presumably it is the intent of counsel for the applicant to substitute for the description of operating authority as filed June 20, 1961.

Inasmuch as the original application was a sworn applica-
66 tion, I do not believe that authority lies in this instance to substitute this statement for that sworn application.

I would like to know from counsel whether it's his intent to withdraw everything from his application except what is here described.

MR. MAJOR: Mr. Bartsch, we have attempted to specify, as briefly as possible, the authority we feel we're entitled to, but under the law we're entitled to a certificate authorizing us to perform all the operations that we prove to this Commission we were performing on a statutory date.

MR. BARTSCH: I'm not speaking about --

MR. ISON: Mr. Bartsch, your objections are noted of record.

Let's proceed.

MR. BARTSCH: May I answer that?

I'm not objecting to the substitute questions. I'm objecting to the procedural questions which this presents. I believe when you file an application under oath you have an onus to proceed with it.

MR. MAJOR: We are proceeding with that application.

MR. ISON: Let's proceed.

By Mr. Major:

Q Mr. Lerner, will you give the reporter your name and business address?

A Moe Lerner, -- L-e-r-n-e-r -- Washington National Airport, Washington, D.C.

67 Q Mr. Lerner, what position do you hold with Airport Transport, Inc., and Air Port Transport, Inc., of Virginia?

A President.

Q Are you president of both companies?

A Yes, sir.

Q How long have you held your present position with the two companies?

A About ten years.

* * * *

95 Q After the affiliation with Airline Transport, Inc., in May of 1959, did you obtain your bus equipment from that affiliate company, except on a very rare occasion?

A Yes, sir.

Q Mr. Lerner, can you describe for us, sir, the nature of the arrangements under which your bus movements have been operated?

A Well, we'd rent a bus for a particular movement and we would corral our passengers, collect the fares, in some instances, arrange for their baggage, -- the baggage is a very important thing with air-line passengers, as you know -- and we would designate as

to where this particular bus would go to.

We were entirely responsible for the transportation of the passengers, the safety of the passengers, the handling of the baggage. We carried special insurance to cover these passengers, to see that they were properly covered.

* * * *

107

CROSS EXAMINATION

* * * *

136

By Mr. Kahn:

Q Now, on March 22, 1961, did you at the Washington National Airport have motor buses lined up at the North Terminal, at the Main Terminal, their two exits there, offering motor bus service to Washington, D.C.?

137

A Well, I couldn't remember. If we had any special reason for it, we would have them. If there was diversionary actions, or if there was cancellations or if we had a special movement, we would have; but, as a general rule, I don't remember that day.

But if you ask me as a general rule do we have buses lined up -- of course not. Only on special occasions.

* * * *

221

EDWARD H. HERNDON

was called as a witness by and on behalf of the applicant, and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MAJOR:

Q Would you state your name?

A Edward H. Herndon.

Q Would you give the reporter, also, your business address?

A Airport Transport, Inc., Washington National Airport, Washington, D.C.

Q What is your position with Airport Transport, Inc., Mr. Herndon?

A I am house counsel and special assistant to the President.

Q How long have you held that position and been affiliated with the company?

A Since October 1961.

Q Now, were you specifically requested by me to prepare or supervise the preparation of certain exhibits for use in connection with the hearing in this application?

A I was.

222 Q And pursuant to those instructions, have you personally prepared, or had prepared under your direct control and supervision, a series of exhibits for introduction into this proceeding?

A That is correct.

* * * *

235 BY MR. MAJOR:

Q In each instance, Mr. Herndon, was the bus equipment involved in connection with the movement shown on Exhibit 21 leased by Airport Transport Inc. from Airline Transport?

A Yes, sir.

Q Now, from what source or underlying data was the information shown on this exhibit taken?

A Whenever Airport Transport operated a bus in our operation, we prepared a manifest, and it indicated the details of the particular trip, and I analyzed those manifests in order to prepare this exhibit. These manifests were prepared by our assistant operations manager and was prepared in the normal daily course of business.

* * * *

247
263

CROSS EXAMINATION

BY MR. KAHN:

Q Now, let me see if we can summarize this situation, Mr. Herndon: On occasion in the winter months, as you have indicated to the Hearing Examiner, because of inclement weather a number of flights would be diverted to Washington, D.C., and if Washington was

264 the open airport, they would land rather rapidly; is that true?

A Yes, sir.

Q And because you were aware that you would have

insufficient equipment to handle this extraordinary group, you would
 either call up Airline Transport over on L Street or up at the Alpeck
 Hotel and tell your dispatchers to send over one or two buses to help
 move the passengers from the airport into downtown Washington;
 doesn't that occur in your operation frequently in bad weather?

A Yes, sir.

* * * *

1

Friday, June 14, 1963

* * * *

64 MR. BARTSCH: Mr. Sklar, since Mr. Major will not do me the
 courtesy of answering the question I asked, I ask the Commission
 under its authority to ask him the question.

We would like to know under what authority he thinks this Com-
 mission has jurisdiction to grant a certificate for an eight-passenger
 vehicle.

I think the Commission can indulge me to the extent of having
 him answer that question.

MR. MAJOR: I would like to answer the question if the Com-
 mission wants me to.

COMMISSIONER SKLAR: Go right ahead.

MR. MAJOR: I thought I had made it quite clear.

I think the Commission is under an obligation by statute to grant
 a certificate to any eight-passenger vehicle unless it is performing a
 bona fide taxicab service.

We contend that we are not performing a bona fide taxicab
 service; that we are not soliciting along the streets, and that we are
 controlling the movement of the vehicle rather than the passenger.

65 Whenever it has that factual situation, this Commission must,
 under the statute, issue a certificate.

It cannot classify it as a bona fide taxicab service.

MR. BARTSCH: By "statute" you mean the Compact?

MR. MAJOR: Yes.

MR. BARTSCH: That is all I want to know.

* * * *

BRIEF FOR RESPONDENT AND APPENDIX

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

United States Court of Appeals
for the District of Columbia Circuit

No. 18,093

FILED AUG 20 1964

**HENRY G. BARTSCH
d/b/a
AIRPORT DISPATCHING SERVICE,**

Nathan J. Paulson
CLERK

Petitioner.

v.

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION,

Respondent.

**Petition for Review of an Order of the
Washington Metropolitan Area Transit Commission**

**RUSSELL W. CUNNINGHAM,
General Counsel,
WASHINGTON METROPOLITAN
AREA TRANSIT COMMISSION,
1815 N. Fort Myer Drive,
Arlington, Virginia.**

**COUNSEL FOR RESPONDENT,
WASHINGTON METROPOLITAN
AREA TRANSIT COMMISSION**

QUESTIONS PRESENTED

1. Was the Commission's finding that the applicant, Airport Transport, Inc., was bona fide engaged in irregular route, special and charter operations by motor bus vehicles correct in law and supported by substantial evidence?

2. If the Commission was correct in issuing a certificate unrestricted as to vehicular size, is the issue of transportation in eight-passenger-or-less sized vehicles moot and therefore not an issue?

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STATUTES

Interstate Commerce Act, Part II, Section 203(b)(7a)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,093

HENRY G. BARTSCH d/b/a
AIRPORT DISPATCHING SERVICE,

Petitioner,

v.

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION,

Respondent.

PETITION TO REVIEW AN ORDER OF THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

BRIEF FOR RESPONDENT AND APPENDIX

COUNTER STATEMENT OF THE CASE

Airport Transport, Inc., seasonably filed an application for operating authority pursuant to Article XII, Section 4(a) of the Washington Metropolitan Area Transit Regulation Compact, stating that it was bona fide engaged in bus, limousine, and taxicab transportation on March 22, 1961, between points in the District of Columbia and Maryland and the Washington National Airport, Virginia.

After notice and hearing, the Commission issued Order No. 251, in which it found applicant to have been bona fide engaged in certain bus and limousine operations and the appropriate certificate of public convenience and necessity was issued therein to reflect such transportation.

Upon reconsideration, the Commission issued Order No. 283, which modified some of its prior findings and conclusions, and issued a new certificate, reflecting the modifications. Thus, Order No. 283 must be read in pari materia with Order No. 251.

STATUTE INVOLVED

In addition to the statutory law set forth in the brief of appellant, the following portion of the Interstate Commerce Act, Part II, February 4, 1887, c. 104, Pt. II, Sec. 201, as added August 9, 1935, c. 498, 49 Stat. 543, and amended September 18, 1940, c. 722, Title I, Sec. 15, 54 Stat. 919, is relevant and material:

"Section. 203(b): Nothing in this chapter, except the provisions of Section 204 of this title relative to qualifications

and maximum hours of service of employees and safety of operations or standards of equipment shall be construed to include . . . (7a) the transportation of persons . . . by motor vehicle when incidental to transportation by aircraft"

SUMMARY OF ARGUMENT

1. On, and prior to, March 22, 1961, Airport Transport was engaged in transporting passengers for hire by motor vehicle from the Washington National Airport, located in Virginia, to points and places in the District of Columbia and that portion of Maryland situated within the Metropolitan District, and from points and places in those areas to said Airport. This transportation was performed in buses, limousines, and taxicabs, and, being interstate commerce in nature, and the passengers transported having either a prior or subsequent movement by aircraft, under the terms of the Interstate Commerce Commission Act this transportation was exempt from the certificate requirements of said Act. While the limousine and taxicab transportation was performed in vehicles owned and operated by the applicant, the bus vehicles utilized in performing the transportation were leased or rented, but were the transportation of the applicant.

2. Inasmuch as the applicant was bona fide engaged in such transportation as to entitle it to a certificate unrestricted as to vehicular size, the question as to the correctness of the determination that the transportation in vehicles designed to carry eight passengers or less is moot and really not an issue. Such transportation found by the Commission

to require a certificate is (1) embraced within the more general authority issued, and (2) even if not subject to the certificate requirements by the original Compact, would now be under the amended Section 1(c) language. Neither the deletion nor a subsequent addition of such transportation would affect the terminology of the authority granted by the Commission.

ARGUMENT

I

Airport Transport, Inc., was found¹ to have been bona fide engaged in transporting persons (having a prior or subsequent movement by aircraft) in motor bus vehicles on and prior to the effective date of the Compact, March 22, 1961², in special and charter operations.

A. That finding was supported by substantial evidence.

Exhibit 21-A shows that applicant utilized at least thirty (30) buses between January 4, 1961, and March 22, 1961, for special or charter movements within the Metropolitan District. Over sixty (60) were engaged in applicant's total business.

The uncontradicted testimony of Mr. Lerner and Mr. Herndon, witnesses for applicant, shows that the bus transportation was bona fide in that it was open and unconcealed (R. A. 5), conducted in good faith (R. A. 1, 5), legal (as argued infra), under applicant's direction and control (R. A. 2,3,4), and for which the applicant had insured its patrons (Tr. 95), paid the Federal Transportation Tax (R. A. 3), collected and retained fares (R. A. 4), supervised the loading and dispatching of

1. Order No. 251.

2. "4(a) No person shall engage in transportation subject to this Act unless there is in force a certificate of public convenience and necessity issued by the Commission authorizing such person to engage in such transportation; provided, however, that if any person was bona fide engaged in transportation subject to this Act on the effective date of this Act, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within 90 days after the effective date of this Act. Pending the determination of any such application, the continuance of such operation shall be lawful."

vehicles (R. A. 3), and operated pursuant to a contract with the Federal Aviation Agency (Exhibit No. 1) since 1947.

Thus, both the documentary and oral evidence show that the bus operations were actual and substantial. Motor Freight Express v. United States, 119 F. Supp. 298, 303 (M. D. Penn. 1954), aff'd per curiam 348 U. S. 891.

Petitioner has stressed that the grant of authority is erroneous because the greater percentage of bus trips originated at the airport than at other points. Of course, this is true. However, the very nature of the business offers the explanation. It is only natural that the focal point of large groups requiring buses would be located at the airport. But it cannot be denied that applicant held itself out to render bus service from points in the Metropolitan District to the airport, and did in fact perform such transportation. The Supreme Court recognized an analogous problem in a proceeding originating before the Interstate Commerce Commission saying, "The broad sweep of his prior service may indeed have made the carriage of any one commodity irregular and infrequent. Yet viewed as a whole rather than as a group of separate and unrelated items, his prior activities may satisfy the test of "bona fide operation" . . . within the scope of his holding out". U. S. et al. v. Carolina Freight Carriers Corp., 315 U. S. 475, 3 Fed. Carr. Cas. 80,023,2067. It is apparent that the standards of the Compact have been properly applied.

B. In addition to having been conducted in good faith, the operations were legal.

Under the terms of the Interstate Commerce Act, the transportation of passengers "incidental" to a movement by aircraft is exempt from the certificate requirements of that Act (supra, p. 2).

The orders of the District of Columbia Public Utilities Commission have no bearing on this case, referring as they do to operations between the District of Columbia and the Friendship Airport, near Baltimore. Nor do the orders purport to do anything more than designate the streets over which certain interstate transportation (District of Columbia - Maryland) shall be rendered. Indeed, that is the extent of the District Commission's jurisdiction over interstate commerce. The Federal Act left no power at all to the states to determine what carriers could or could not operate in interstate commerce. Castle v. Hayes Freight Lines, Inc. (1954) 75 S. Ct. 191, 348 U. S. 61. Nor, the Court further declared, could the right of the interstate carrier to use the highways be suspended by the state (here, the District of Columbia).

The authority issued to the applicant is in "substantial parity" with the prior bona fide operations as to the statutory date. Zuzich Truck Lines, Inc. v. United States et al., (U. S. Dist. Ct., Kansas, Oct. 11, 1963) 15 Fed. Carr. Cas. 81,581; Crescent Express Lines, Inc. v. United States, 320 U. S. 401.

II

Any issues relating to transportation in vehicles designed to seat eight-passengers-or-less have been mooted by the lawful grant of authority unrestricted as to vehicular size and the amendment of

Section 1(c) of the Compact.

A. As discussed hereinbefore, the Commission issued the applicant a certificate of public convenience and necessity that is unrestricted insofar as the type of vehicle used in performing the transportation authorized. Thus, any suitable vehicle may be used in performing under the terms of the certificate. This includes buses of any seating capacity as well as eight-passengers-or-less vehicles. There can be no argument that the operation of a vehicle designed to carry more than eight passengers requires a certificate of public convenience and necessity. Therefore, once such authority is issued, the operation of a vehicle of less than eight-passenger capacity under that certificate cannot be subjected to criticism insofar as operating authority is concerned. Significantly, the applicant has not interposed an objection hereto. It is really the only person that could be "aggrieved" by a denial of certificate jurisdiction over eight-passenger-or-less vehicles. Thus, petitioner seeks legal redress upon a matter which, if decided in his favor, cannot have any practical effect upon the existing conditions.

B. Assuming, arguendo, that petitioner is correct¹, that the transportation performed in non-buses (eight-passenger capacity vehicles)

1. Under the original language of Section 1(c), Article XII, Compact, the Commission interpreted the phrase "taxicabs and other vehicles designed to carry eight passengers" to mean "taxicabs and other vehicles performing a bona fide taxicab service". This interpretation was overruled by this Court in Montgomery Charter Service, Inc., v. Washington Met. Area Transit Comm'n, ____ App. D. C. ____, 325 F. 2d 230 (1963).

was exempt even though the applicant's bus size vehicle transportation required a certificate of public convenience and necessity, then the amendment³ of October 9, 1962, to the Compact would require such transportation (since it was found to be not a taxicab) to be "grandfather" certificated⁴. The petitioner has interposed no objection to the findings of the Commission as to the bona fideness of the transportation rendered in eight-passenger vehicles nor to the extent of such transportation authorized in Order No. 283. However, this transportation would be embraced by the unrestricted certificate as issued and the existing certificate would not be altered in any way.

WHEREFORE, the respondent respectfully moves this honorable Court to affirm the Commission's orders and to dismiss the petition for review.

Respectfully submitted



RUSSELL W. CUNNINGHAM
General Counsel
1815 N. Fort Myer Drive
Arlington, Virginia

Attorney for Respondent
WASHINGTON METROPOLITAN
AREA TRANSIT COMMISSION

Dated: August 20, 1964

3. The amended version of Section 1(c) provides:

"Notwithstanding the provisions of paragraph (a) of this section, this Act shall apply to taxicabs and other vehicles used in performing bona fide taxicab service having a seating capacity of eight passengers or less in addition to the driver thereof with respect only to (i) the rate or charges for transportation from one signatory to another within the confines of the Metropolitan District, and (ii) requirements for minimum insurance coverage."

4. Montgomery Charter Service, Inc. v. Wash. Metro. Area Trans. Comm., supra.

EXCERPTS FROM THE TRANSCRIPT OF HEARING FEBRUARY 11, 1963

MOE LERNER

was called as a witness by and on behalf of the applicant and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Major:

81 Q. Now, have the operations which have been conducted by Airport Transport, Inc., been conducted under exemptions of the Interstate Commerce Act or exemptions under the other regulatory commissions?

A. Yes, sir.

* * *

88 Q. Now, in addition to its limousine services that you've described, sir, was Airport Transport, Inc., providing any bus service --

A. Yes, sir.

Q. -- for passengers traveling between the Washington National Airport and points in the Washington Metropolitan Transit District --

A. Yes, sir.

Q. -- on March 22, 1961?

A. Yes, sir.

Q. Could you describe for us the nature and extent of that bus service?

A. Well, ever since we've been in business, we've leased buses from many or most of the bus companies in this area, and we use it during cancellations or diversionary actions or for some special peak period at the airport when we're unable to perform the service with just limousines and taxicabs.

* * *

90 Q. You mentioned cancelled and diverted flights. Are there any occasions where you have had large groups traveling together, so to speak, that requested bus service?

A. Oh, yes. We have provided service for large groups, such as football teams and baseball teams, schools.

Now, when schools are out, there'll be an unusually large amount of passengers who request service, and we might rent a bus either to or from the particular school.

Q. Now, in some instances, as I understand it, you are requested to provide charter service to the airlines for such large movements; is that correct?

A. That is correct.

* * *

94 Q. Were you conducting bus operations on March 22, 1961, such as you just previously described, --

A. Yes, sir; conducting --

Q. -- both on a charter basis and on an individual basis?

95 A. Yes, sir. We have been conducting ever since we have been in business.

Q. Now, prior to your company's affiliation with Airline Transport, Inc., in May of 1959, which is I think when that company first commenced business, did you normally lease or rent your equipment from Greyhound or Trailways or some other carriers?

A. We rented equipment wherever we could get it.

Q. After the affiliation with Airline Transport, Inc., in May of 1959, did you obtain your bus equipment from that affiliate company, except on a very rare occasion?

A. Yes, sir.

Q. Mr. Lerner, can you describe for us, sir, the nature of the arrangements under which your bus movements have been operated?

A. Well, we'd rent a bus for a particular movement and we would corral our passengers, collect the fares, in some instances, arrange for their baggage, -- the baggage is a

very important thing with air-line passengers, as you know -- and we would designate as to where this particular bus would go to.

We were entirely responsible for the transportation of the passengers, the safety of the passengers, the handling of the baggage. We carried special insurance to cover these passengers, to see that they were properly covered.

96 Where we didn't collect individual fares, we would bill, may have billed, a certain airlines for that particular service. We would collect from the airlines and we would pay the bus company direct.

Q. Let's take the request for charter movement, say, from one of the airlines like American Airlines. In that instance, was your company, Airport Transport, Inc., contacted to provide the necessary charter bus service from the airport to whatever destination the passengers --

* * *

Q. In those instances, Mr. Lerner, would you get the request for charter service direct from some airline?

A. Yes, sir.

Q. Then would you obtain the necessary equipment by renting or leasing it from Airline Transport, Inc.?

A. Right.

Q. And who would supervise the loading and the dispatching of that vehicle?

A. Our dispatchers.

98 Q. And would that be the same on the individual fare movements?

A. Yes, sir.

Q. Who pays the Federal transportation tax for those movements?

A. Airport Transport. We did.

Q. Who paid the Federal Government any franchise fee on the revenue that was derived from traffic originated at the airport?

A. Airport Transport -- we did, -- paid the franchise fees.

Q. Who billed the airlines for the charter movement?

A. Airport Transport. We did.

Q. Who collected it?

Who collected for the charter movement?

A. We did.

Q. Who paid the Airline Transport for the equipment which was leased from it?

A. Airport Transport did.

Q. Who collected the individual fares and retained that revenue?

A. Airport Transport did.

Q. When you provided the bus service for individual passengers from the airport to points in the Washington Metropolitan Area Transit District, did you collect the same fare that you would get from your limousine service or not?

99 A. Yes. In all the cases that I know of; yes.

Q. When you leased the equipment from Airline Transport, Inc., for such a movement, have there been occasions where you actually lost money in providing that service?

MR. KAHN: Oh, I object.

MR. ISON: I don't believe that is material to the case Mr. Major.

MR. KAHN: This is ridiculous -- going into whether he lost money on a particular trip.

By Mr. Major:

Q. When you leased your equipment from Airline Transport, Inc., did you pay a flat amount for each trip that was involved?

A. Yes. There was a fixed fee that we paid.

* * *

A-4

103 Q. Do you have a copy of an advertisement appearing in the Washington Daily News on March 25, 1959, advertising cab, limousine and bus service by Airport Transport, Inc.?

A. Yes, sir.

MR. MAJOR: May we have this identified as Exhibit No 13?

REDIRECT

197 Q. Are your bus passengers, those you handle by bus to and from the airport -- have those operations been exempted under the exceptions of the Interstate Commerce Act?

A. Yes.

* * *

221

EDWARD H. HERNDON

was called as a witness by and on behalf of the applicant, and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MAJOR:

* * *

233 Q. Mr. Herndon, have you also had prepared as an exhibit a summary of the bus movements which have been operated by Airport Transport, Inc., in 1961, from the period January through -- well, for the entire year 1961?

A. Yes, sir, I have.

MR. MAJOR: May we have it identified as Exhibit 21?

MR. ISON: It will be so marked.

(The document referred to, being a three-page document entitled, "Summary of Bus Movements Operated by Airport Transport, Inc. in 1961", was marked for identification as Applicant's Exhibit No. 21.)

BY MR. MAJOR:

Q. Looking at Exhibit 21, if you would, Mr. Herndon, what

does this exhibit purport to show, and for what purpose has it been introduced?

A. This exhibit is a summary of the bus movements operated by Airport Transport in the year 1961, and details each movement, each bus movement by Airport Transport, and it is submitted in support of our request for authority to operate coaches.

Q. Does the date column show the date the bus movements were formed?

A. Yes, sir.

Q. And the number column, does that show the number of buses involved in the particular movement?

A. Yes.

Q. The origin shows where the bus movement originated from?

A. Yes, sir.

Q. The destination, the destination of the bus?

A. Yes, sir.

235 Q. And the type of movement, I assume, from looking at Exhibit 121, are two types, either charter or individual fare movements; is that correct?

A. Yes, sir.

Q. Where you show individual fares and cash fares, are they the same?

A. Yes, sir.

Q. Is this exhibit offered in support of authority applied for in both paragraphs 1 and 2 of the amended description of the authority applied for?

A. Yes, sir.

Q. In each instance, Mr. Herndon, was the bus equipment involved in connection with the movement shown on Exhibit 21 leased by Airport Transport, Inc. from Airline Transport?

A. Yes, sir.

Q. Now, from what source or underlying data was the information shown on this exhibit taken?

A. Whenever Airport Transport operated a bus in our operation, we prepared a manifest, and it indicated the details of the particular trip, and I analyzed those manifests in order to prepare this exhibit. These manifests were prepared by our assistant operations manager and was prepared in the normal daily course of business.

BEFORE THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 251

IN THE MATTER OF:)	Served April 25, 1963
)	
Application of Airport Transport, Inc.,)	
and Airport Transport, Inc., of Virginia,)	Docket No. 34
for a Certificate of Public Convenience)	
and Necessity (Grandfather application))	Application No. 46

APPEARANCES:

Linwood C. Major, Jr., Attorney for Applicant.

Manuel J. Davis, Attorney for W. V. & M. Coach Company,
Inc., Protestant.

Henry G. Bartsch, Pro se, Airport Dispatching Service,
Protestant.

John R. Sims, Jr., and C. Robert Sarver, Attorneys for
D. C. Transit System, Inc., Protestant.

S. Harrison Kahn, Attorney for A. B. & W. Transit Company,
The Gray Line and Diamond Tours, Inc., Protestants.

Robert J. Stanford, Attorney for Montgomery Charter Services,
Inc., Protestant.

Before Delmer Ison, Presiding Officer.

OPINION

By application filed June 20, 1961, under the grandfather clause of Section 4(a), Article XII, Title II, of the Washington Metropolitan Area Transit Regulation Compact, hereinafter referred to as Compact, Airport Transport, Inc., and Airport Transport, Inc., of Virginia, seek a certificate of public convenience and necessity authorizing continuance of operations

as carriers by motor vehicle between certain points within the Washington Metropolitan Area Transit District, hereinafter referred to as Metropolitan District.

Pursuant to public notice duly given, a hearing on the application was held on February 11, and 12, 1963. At the opening of the hearing, counsel for applicants tendered an amended description of operating authority applied for in their original application. The purpose of the amendment was to clarify the original request for operating authority.

In their application, as amended, applicants specifically seek a certificate of public convenience and necessity authorizing the following transportation services:

I. Passengers and their baggage in special operation service, over irregular routes, between the Washington National Airport, on the one hand, and points in the Metropolitan District, on the other, subject to the following restriction:

Restricted to passengers having a prior or subsequent movement by air to or from the Washington National Airport.

II. Passengers and their baggage in charter service, over irregular routes, between the Washington National Airport, on the one hand, and points and places in the Metropolitan District, on the other, subject to the following restriction:

Restricted to passengers having a prior or subsequent movement by air to or from the Washington National Airport.

III. Passengers and their baggage, limited to not more than seven passengers, not including driver, in any one vehicle, in special operations, on round-trip sightseeing or pleasure tours, restricted to traffic originating and terminating at the point indicated over irregular routes:

From Washington, D. C., to Mt. Vernon, Virginia, and return.

IV. Passengers and their baggage, limited to not more than seven passengers, not including driver, in any one vehicle, in round trip charter operations over irregular routes:

From Washington, D. C., to points and places in the States of Virginia and Maryland within the Washington Metropolitan Area Transit District, and return.

V. Passengers and their baggage, limited to not more than seven passengers, not including the driver, in any one vehicle, in special or charter operations between points within the District of Columbia.

The only operations not specifically included in the amended description of authority, but included in the original application, was the scheduled operations from the Statler Hotel, Mayflower Hotel, Willard Hotel and applicants' downtown terminal to the Washington National Airport.

Section 4(a) of Article XII, Title II, of the Compact under which provision the within application was filed, reads as follows:

"No person shall engage in transportation subject to this Act unless there is in force a certificate of public convenience and necessity issued by the Commission authorizing such person to engage in such transportation; provided, however, that if any person was bona fide engaged in transportation subject to this Act on the effective date of this Act, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within 90 days after the effective date of this Act. Pending the determination of any such application, the continuance of such operations shall be lawful."

Objections to the application have been duly entered by the carriers listed as "protestants" under the heading, "Appearances" of this Order. None of the protestants submitted the testimony of any witnesses at the hearing; their participation being limited to cross-examination of applicants' witnesses.

While the Commission was not required by the Compact to hold a hearing on the application, the nature of the issues involved prompted a hearing.

The application was seasonably filed under the Compact. The issue to be determined by the Commission is whether or not applicants were, on March 22, 1961, bona fide engaged in the transportation for which authority is sought.

Certain transportation, although performed within the Metropolitan District, is nevertheless exempt from the jurisdiction of the Commission.

Under Sections 1(b), Article XII, Title II, of the Compact, "transportation (performed) solely within the Commonwealth of Virginia" is not subject to the jurisdiction of the Commission. Thus, to the extent the

application seeks authority to continue operations solely within the Commonwealth of Virginia, the application must be dismissed. Section 1(c), Article XII, Title II, of the Compact, contains the normal taxicab exemption insofar as certification is concerned. Under this section, motor vehicles used in providing bona fide taxicab services are exempt from the jurisdiction of the Commission insofar as operating authority is concerned. A taxicab is defined in Section 2(d), Article XII, Title II, of the Compact, as follows:

"The term 'taxicab' means any motor vehicle for hire (other than a vehicle operated, with the approval of the Commission, between fixed termini on regular schedules) designed to carry eight persons or less, not including the driver, used for the purpose of accepting or soliciting passengers for hire in transportation subject to this Act, along the public streets and highways, as the passengers may direct."

Thus, applicants need no authority to continue operations coming within the taxicab exemption, and the Commission so finds.

Essentially, by this application, applicants seek authority to continue providing ground transportation for airline passengers to and from the Washington National Airport and to continue to provide transportation services with vehicles, limited to not more than seven passengers, not including the driver, as set forth in paragraphs III, IV, and V on page 3 of this Order. Based on numerous prior rulings of this Commission, no authority is required from the Commission for applicants to continue this special, charter and sightseeing operations in vehicles limited to seven passengers, not including the driver. The record shows and the Commission finds that this transportation is generally provided as the

passengers direct and, therefore, falls within the taxicab exemption.

Left for determination is that part of the application which seeks authority to continue transportation service for airline passengers between the Washington National Airport and points and places within the Metropolitan District.

When in this Order reference is made to "airline passengers" the term includes "airline crews".

Under Section 203(b), 7(a), Part II of the Interstate Commerce Act, transportation of persons by motor vehicle when incidental to transportation by aircraft is exempt from the certificate requirements of the Interstate Commerce Commission. Such transportation, however, is not exempt from the certificate requirements of this Commission under the Compact. The applicants claim a grandfather right by virtue of past operations conducted under the aforementioned exemption of the Interstate Commerce Act.

No one contested the legal basis of applicants' operations in providing ground transportation for airline passengers to and from the Washington National Airport. Applicants have been engaged in the performance of this transportation, under contract with the Federal Aviation Agency, since January 2, 1947, to date. The following quotation is taken from the contract effective July 1, 1956, through June 30, 1961:

"(a). Concessions. The Government hereby grants to the Contractor (applicants) subject to all the terms, conditions and covenants of this Agreement, the sole right,

power and privilege to operate a taxicab, limousine and motor coach service for passengers and baggage originating at the Airport. The Government will not authorize any other operator to conduct such a transportation service on the Airport during the term of this Agreement except the regularly scheduled service operated by the A. B. & W. Transit Company."

A new contract was subsequently entered into authorizing applicants to provide ground transportation to and from both the Washington National Airport and the Dulles International Airport. Applicants submitted numerous exhibits which explained in considerable detail the nature of their operations, type of equipment, volume of business, and other information relating directly to applicants' operations. The testimony of applicants, given both orally and through the introduction of exhibits, establishes the fact that applicants were, on March 22, 1961, providing ground transportation for airline passengers between points in the Metropolitan District and the Washington National Airport. Based on the evidence of record, the ground transportation provided by applicants falls within three major categories, namely; motor coaches (buses), group-riding limousines, and taxicabs.

The taxicab operations are conducted exclusively by Airport Transport, Inc., of Virginia, one of the applicants herein. It should be noted here that Airport Transport, Inc., and Airport Transport, Inc., of Virginia, have common directors, officers and employees. On the critical date, March 22, 1961, applicant performed taxicab service between the Washington National Airport and all points in the Metropolitan District. Approximately one hundred and nineteen (119) taxicabs

were devoted to this service. It being conceded by applicant, Airport Transport, Inc., of Virginia, that its operations were confined to taxicab operations, and thereby falling within the taxicab exemption of the Compact, no authority from the Commission is required for the continuance of such operations and the Commission so finds. Therefore, further discussions of the applicant, Airport Transport, Inc., of Virginia, and its operations, become unnecessary.

This leaves for consideration that portion of the application by which Airport Transport, Inc., seeks authority to continue to perform transportation for airline passengers by buses and limousines between the Washington National Airport on the one hand, and the District of Columbia, and points and places in Maryland, situated within the Metropolitan District, on the other. It developed during the course of the hearing that applicant is not seeking to serve between the airport and points and places in Virginia.

Specifically, the Commission must determine whether applicant, Airport Transport, Inc., was bona fide engaged, on March 22, 1961, in the transportation of airline passengers and their baggage as follows:

1. Airline passengers and their baggage in special non-scheduled operation service, over irregular routes, between the Washington National Airport on the one hand, and points in the District of Columbia and that portion of Maryland situated within the Metropolitan District on the other.

2. Airline passengers and their baggage in charter service, over irregular routes, between the Washington National Airport and points and places in the District of Columbia and that portion of Maryland situated within the Metropolitan District on the other.

3. Airline passengers and their baggage, in scheduled operation service, over irregular routes, from the Statler Hotel, Mayflower Hotel, Willard Hotel, and applicant's downtown terminal to the Washington National Airport.

The Washington National Airport is located on the Potomac River, within the geographical boundaries of the Commonwealth of Virginia.

The Commission will first discuss applicant's limousine operations. The manner in which the limousine operations are conducted can be summarized best by quoting the direct testimony of applicant's president appearing on pages 82, 83 and 84, Volume I of the Transcript. Applicant's counsel propounded the questions:

"Q. Mr. Lerner, as briefly as you can, sir, would you describe for us, first of all, the nature and extent of the limousine transportation services which your company, that is, Airport Transport, Inc., was performing on March 22, 1961, to and from the Washington National Airport?

A. Our limousine service is a highly specialized business, tailored expressly to cater to the air-line passenger to and from Washington National Airport. It's a group riding, as I said before, and an economy type of operation.

That's as far as the Aerobuses are concerned.

We also provide a Cadillac type of limousine that caters to the VIP, very important people, who require or

request exclusive limousine service on a charter basis.

Q. Now, with respect to the first type of service, your specialized ground transportation group-riding service, has that been an individual fare service?

A. Yes, sir.

Q. Is that the principal service or the backbone service that has been provided by your company?

A. It's primarily the principal service; yes, sir.

Q. Would you describe for us, sir, how your vehicles are loaded, dispatched and operated in that particular service -- first of all, from the airport?

A. When the passengers arrive at the airport, they go out the nearest exit and our dispatcher greets them, and he then will direct them to a particular Aerobus, limousine, if you want to call it, and he will group these people who will be going in the general, same direction, and when he has several people in this limousine he'll give the driver his slip, his loading slip, and tell him to get on his way.

Q. Who controls the movement of the vehicle, that is, who selects the route to be followed and the order or manner in which the passengers are to be discharged?

A. The driver.

He is equipped to designate the route because the route that he uses is dependent upon the time of the day, weather conditions, traffic conditions, and generally, they're well trained and they know what route to pursue in order to cause the least amount of inconvenience to the passengers.

Q. Now, in operating back from the airport to the Washington metropolitan area, do I understand that you originate passengers only at the Washington National Airport?

You don't pick up passengers at any other point in those vehicles after you once leave the airport, do you?

A. Oh, no. We don't pick up any passengers. We don't perform any service in any other area from one point to another. Our passengers either originate or they terminate at the Washington National Airport. They're air-line passengers.

Q. How are your vehicles dispatched or operated in the reverse direction, that is, from points in the Washington metropolitan area going back to the airport?

A. Exactly the same way.

Q. And, again, is the route selected by the driver?

A. Yes, sir.

Q. Do you combine pick-ups on your trips from points in the Washington area to the airport?

A. Yes, sir.

We have two-way radios, communications systems, that make it possible for us to combine and group people to the airport, the same as we do from the airport.

Q. Even prior to your installation of your two-way radios, did you combine passengers by prior request?

A. Yes, sir.

Q. Now, what area have you served, from the Washington National Airport in this group-riding limousine service?

A. The entire metropolitan area and any place a passenger wants to go.

Q. And how about in the reverse direction -- service to the airport? What areas have you served?

A. Metropolitan area or wherever a passenger may request to be picked up."

* * *

The witness went on to explain that this type of limousine service was provided to and from all points within the Metropolitan District, except points in Virginia.

The record shows that on March 22, 1961, applicant operated approximately fifty (50) limousines and employed seventy-three (73) full-time drivers and nine (9) part-time drivers. The record further shows that during the month of March, 1961, applicant transported a total of thirty-six thousand, nine hundred and twenty-eight (36,928) passengers, in its group-riding limousine service, between the Washington National Airport and points in the District of Columbia, and the counties of Prince George and Montgomery in Maryland.

Simply stated, the group-riding limousine service has been employed as a means to transport a group of airline passengers to or from the airport.

In connection with bus service of applicant, the Commission will again quote from portions of the direct testimony at pages 88-90, and 94-99, of Volume I of the Transcript. Applicant's president testified as follows, the questions being propounded by counsel for applicant:

"Q. Now, in addition to its limousine services that you've described, sir, was Airport Transport, Inc., providing any bus service?

A. Yes, sir.

Q. -- for passengers traveling between the Washington National Airport and points in the Washington Metropolitan Transit District--

A. Yes, sir.

Q. On March 22, 1961?

A. Yes, sir.

Q. Would you describe for us the nature and extent of that bus service?

A. Well, ever since we've been in business, we've leased buses from many or most of the bus companies in this area, and we use it during cancellations or diversionary actions or for some special peak period at the airport when we're unable to perform the service with just limousines and taxicabs.

Q. Normally, has the proximity of the Washington National Airport to the City of Washington, more or less demanded or required that you provide basically a limousine service for inter-line passengers?

A. Yes.

Q. Well, again, would you enumerate what situation or what occasion normally prompts the use of bus service by your Company?

A. Well, the majority of this business is caused by cancellations or diversions.

Now, cancellations means that New York is closed in, and therefore, the passengers -- the airlines will notify us, and the passengers will stream out of the airport most likely by the hundreds, and they'll want to be taken to the Union Station, and we then will charter or lease or rent buses, and we will put these passengers in these buses, collect the fares, and take them to the Union Station.

Q. Now, in that connection --

A. That's in regard to the cancellations.

Now, then, you have the diversions where the New York Airport might be closed and the airplane, instead of landing in New York, will land at the Washington National Airport, and then the passengers will come out and want -- or not necessarily New York Airport, but any airport; it might be Philadelphia; it might be Richmond; it might be Norfolk; it might be Friendship. They'll land at the National Airport and we will then be given

notice from the airlines to expect an unusual amount of passengers and prepare ourselves. We then will rent or lease a bus from different operators and provide this service.

Q. You mentioned cancelled and diverted flights. Are there any occasions where you have had large groups traveling together, so to speak, that requested bus service?

A. Oh, yes. We have provided service for large groups, such as football teams and baseball teams, schools.

Now, when schools are out, there'll be an unusually large amount of passengers who request service, and we might rent a bus either to or from the particular school.

Q. Now, in some instances, as I understand it, you are requested to provide charter service to the airlines for such large movements; is that correct?

A. That is correct.

* * *

Q. Were you conducting bus operations on March 22, 1961, such as you previously described --

A. Yes, sir; conducting --

Q. -- both on a charter basis and on an individual basis?

A. Yes, sir. We have been conducting ever since we have been in business.

Q. Now, prior to your company's affiliation with Airline Transport, Inc., in May of 1959, which is, I think, when that company first commenced business, did you normally lease or rent your equipment from Greyhound or Trailways or some other carriers?

A. We rented equipment where we could get it.

Q. After the affiliation with Airline Transport, Inc., in May of 1959, did you obtain your bus equipment from that affiliate company, except on a very rare occasion?

A. Yes, sir.

Q. Mr. Lerner, can you describe for us, sir, the nature of the arrangements under which your bus movements have been operated?

A. Well, we'd rent a bus for a particular movement and we would corral our passengers, collect the fares, in some instances, arrange for their baggage -- the baggage is a very important thing with air-line passengers, as you know-- and we would designate as to where this particular bus would go to.

We were entirely responsible for the transportation of the passengers, the safety of the passengers, the handling of the baggage. We carried special insurance to cover these passengers, to see that they were properly covered.

Where we didn't collect individual fares, we would bill, may have billed, a certain airlines for that particular service. We would collect from the airlines and we would pay the bus company direct.

* * *

Q. In those instances, Mr. Lerner, would you get the request for charter service direct from some airline?

A. Yes, sir.

Q. Then would you obtain the necessary equipment by renting or leasing it from Airline Transport, Inc.?

A. Right.

Q. And who would supervise the loading and the dispatching of that vehicle.

A. Our dispatchers.

Q. And would that be the same on the individual fare movements?

A. Yes, sir.

Q. Who pays the Federal Transportation tax for those movements?

A. Airport Transport. We did.

Q. Who paid the Federal Government any franchise fee on the revenue that was derived from traffic originated at the airport?

A. Airport Transport -- we did -- paid the franchise fees.

Q. Who billed the airlines for the charter movement?

A. Airport Transport, we did.

Q. Who collected it? Who collected for the charter movement?

A. We did.

Q. Who paid the Airline Transport for the equipment which was leased from it?

A. Airport Transport did.

Q. Who collected the individual fares and retained that revenue?

A. Airport Transport did.

Q. When you provided the bus service for individual passengers from the airport to points in the Washington Metropolitan Area Transit District, did you collect the same fare that you would get from your limousine service or not?

A. Yes. In all the cases that I know of; yes."

* * *

The record shows that for the period January 4, 1961, through March 22, 1961, both dates inclusive, applicant made sixty-seven (67) individual bus movements in the transportation of airline passengers to and from the Washington National Airport. The nature and purpose of these movements were dependent upon the circumstances prevailing at the time.

The transportation charges assessed were based upon the nature of the movement. In all instances, however, the transportation was incidental to transportation by aircraft.

An issue raised during the hearing was whether applicant could have been bona fide engaged, as of March 22, 1961, in transportation through the use of leased or rented buses. One of the determinant factors in resolving this issue is whether or not applicant, in its own right, was lawfully engaged in the performance of such transportation.

Prior to March 22, 1961, the transportation of persons by motor vehicle when incidental to transportation by aircraft was exempt from the certificate requirements of the Interstate Commerce Commission. The ownership of the "motor vehicle" was not the controlling factor. The important requirement was that the transportation be performed by motor vehicle. Even though in this case, the applicant may have leased or rented the motor coaches, it did exercise the degree of control over their operations to justify a finding that such operations were in fact conducted by applicant. In arriving at this finding, the Commission has taken into consideration numerous factors, including, but not limited to, the nature and extent of the operations, the fact these operations were conducted by applicant openly and without deceit, the contractual obligations under which these operations were conducted, the party arranging the transportation, and the fact that applicant was lawfully engaged in the performance of such transportation whether or not applicant was the owner of the motor vehicles involved.

The record shows conclusively and the Commission finds that on March 22, 1961, applicant was engaged, by motor vehicle, in the transportation of airline passengers, which transportation was incidental to transportation by aircraft, between the Washington National Airport on the one hand and points in the District of Columbia and that portion of Maryland situated within the Metropolitan District on the other; that applicant was lawfully and bona fide engaged in such transportation on March 22, 1961. This transportation was performed with motor vehicles ranging in size from five (5) passenger vehicles to large motor coaches (buses).

In view of the large area of operations allowable without operating authority under the taxicab exemption, supra, which encompasses a substantial portion of applicant's group-riding limousine service, it becomes necessary to carefully delineate specifically the authority being granted applicant in order to avoid any encroachment upon the exempt status of bona fide taxicab operations. This is essential because to grant an applicant a certificate of public convenience and necessity for the operation of vehicles with a seating capacity of eight (8) passengers or less is to deny in the same breath a non-holder of such a certificate the right to perform the same or similar service. The taxicab industry is entitled to the same protection under the law -- even though operating under a legal exemption -- as are holders of operating authority.

In order that the taxicab industry may operate in a flexible manner as contemplated by the Compact, the Commission has applied a liberal interpretation to the taxicab exemption as set forth in Section 2(d), Article XII, Title II, of the Compact, supra. The extent to which the Commission may control the operations of vehicles with a seating capacity of eight (8) passengers or less, is carefully set forth in the parenthetical clause in the aforementioned section of the Compact. This parenthetical clause reads as follows:

"....(other than a vehicle operated, with the approval of the Commission, between fixed termini on regular schedules)...."

Succinctly stated, the operation of motor vehicles having a seating capacity of eight (8) passengers or less, not including the driver, are exempt from the certificate requirements of the Commission unless such vehicles are operated "between fixed termini on regular schedules."

When this interpretation is applied to the instant application, the conclusion to be drawn therefrom is obvious. The only operations of applicant by motor vehicles with a seating capacity of eight (8) passengers or less coming within the certificate requirements of the Commission are those scheduled operations from the downtown hotels and the downtown terminal to the Washington National Airport. All other operations of applicant by this size vehicles fall within the taxicab exemption, supra.

There was some reference made to an alleged scheduled operation from points in Montgomery County to the Washington National Airport

during the course of the proceeding. This matter may be disposed of by merely pointing out that even though such operations have been conducted by applicant in the past, they were not being conducted on or before March 22, 1961.

Findings of Fact

In discussing the essential and relevant issues the Commission entered its findings along with the discussions and it is not deemed necessary to repeat them here. All statements of fact in this Order, for which a finding was not entered, are hereby adopted by the Commission as additional findings of fact.

Conclusions of Law

The Commission concludes as a matter of law:

1. That applicant, Airport Transport, Inc., of Virginia, was not bona fide engaged in the transportation of passengers by motor vehicle subject to the certificate requirements of the Commission pursuant to Section 4(a), Article XII, Title II of the Compact, on March 22, 1961.

2. That applicant, Airport Transport, Inc., was bona fide engaged in transportation of passengers by motor vehicle subject to Section 4(a), Article XII, Title II of the Compact, in the manner more fully set forth in this Order on March 22, 1961.

All other conclusions reached in other parts of this Order are hereby adopted as additional conclusions of law.

ORDER

THEREFORE, IT IS ORDERED:

1. That certificate of public convenience and necessity No. 7-B be, and it is hereby, granted to Airport Transport, Inc., to transport passengers for hire as follows:

(A) NON-SCHEDULED, IRREGULAR ROUTES, SPECIAL AND CHARTER OPERATIONS:

Passengers and their baggage between the Washington National Airport on the one hand, and points and places in the District of Columbia and that portion of Maryland, situated within the Washington Metropolitan Area Transit District on the other, restricted to passengers and aircraft crews having a prior or subsequent movement by air to or from the Washington National Airport.

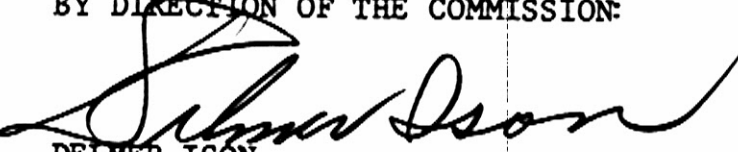
(B) SCHEDULED, IRREGULAR ROUTE OPERATIONS:

Passengers and their baggage from the Statler Hotel, Mayflower Hotel, Willard Hotel, and the downtown airport terminal, Washington, D. C., to the Washington National Airport, restricted to passengers and aircraft crews having a prior or subsequent movement by air to or from the Washington National Airport.

2. That Airport Transport, Inc., shall forthwith file with the Commission appropriate tariffs pursuant to the authority granted herein.

3. That in all other respects, the application of Airport Transport, Inc., and Airport Transport, Inc., of Virginia, be, and the same is, hereby denied.

BY DIRECTION OF THE COMMISSION:


DELMER ISON
Executive Director

BEFORE THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION
WASHINGTON, D. C.
ORDER NO. 283

Served: July 3, 1963

IN THE MATTER OF:

Application of Airport Transport, Inc.,)	
and Airport Transport, Inc., of Virginia)	
for a Certificate of Public Convenience)	Docket No. 34
and Necessity (Grandfather Application))	Application No. 46

Appearances as shown in prior orders.

By Order No. 264, the Commission granted reconsideration of its Order No. 251, pursuant to applications for reconsideration filed by various parties of record. The Commission, having reconsidered the record, the applications for reconsideration and the oral arguments heard thereupon, is of the opinion that certain findings and conclusions reached in Order No. 251 should be modified.

By Order No. 251, among other things, the Commission granted Airport Transport, Inc., applicant herein, a certificate of public convenience and necessity as follows:

(A) NON-SCHEDULED, IRREGULAR ROUTES, SPECIAL
AND CHARTER OPERATIONS:

Passengers and their baggage between the Washington National Airport on the one hand, and points and places in the District of Columbia and that portion of Maryland, situated within the Washington Metropolitan Area Transit District on the other, restricted to passengers and aircraft crews having a prior or subsequent movement by air to or from the Washington National Airport.

(B) SCHEDULED, IRREGULAR ROUTE OPERATIONS:

Passengers and their baggage from the Statler Hotel, Mayflower Hotel, Willard Hotel, and the downtown airport terminal, Washington, D. C., to the Washington National Airport, restricted to passengers and aircraft crews having a prior or subsequent movement by air to or from the Washington National Airport.

In granting reconsideration, the Commission called for oral arguments on the two following issues:

- (1) Whether or not certain operations being conducted by Airport Transport, Inc., particularly those operations from Montgomery County and from certain downtown hotels, including the downtown airport terminal, to the Washington National Airport, are in fact, scheduled operations;
- (2) Whether or not the group riding limousine service provided by Airport Transport, Inc., is subject to the certificate jurisdiction of this Commission.

Upon reconsideration of the entire record, including oral arguments of counsel, the Commission now finds that the operations of applicant from points in Montgomery County, the downtown hotels and the downtown terminal to the Washington National Airport are not scheduled operations. No schedules are posted; the operations are over irregular routes; no specific arrival time is guaranteed; and, perhaps, more important, on numerous occasions, the service is not operated. Mere departure time without these other ingredients is insufficient, under the facts in this record, to warrant a finding of "scheduled operations." These operations may be more properly classified as mere adjustments in service which was being provided by applicant on and before March 22, 1961.

The Commission held in Order No. 251 that applicant's group-riding limousine service was a bona fide taxicab service. Upon reconsideration of the record, the applications for reconsideration and oral arguments heard thereupon, the Commission now finds that the group-riding limousine service of applicant is not a bona fide taxicab service, in that the transportation is not directed by the passengers. Thus, such transportation does not come within the definition of Section 2(d) of the Compact, and therefor it is not exempt from the certificate requirements of Section 4(a) of the Compact.

- ORDER NO. 283 -

All findings of fact and conclusions of law of the Commission contained in Order No. 251, are hereby modified to conform to this Order.

THEREFORE, IT IS ORDERED:

(1) That the authority granted Airport Transport, Inc., by Order No. 251, is hereby set aside and held for naught.

(2) That Certificate of Public Convenience and Necessity No. 7-B be, and it is hereby, granted to Airport Transport, Inc., to transport passengers for hire as follows:


IRREGULAR ROUTES, SPECIAL AND CHARTER OPERATIONS:

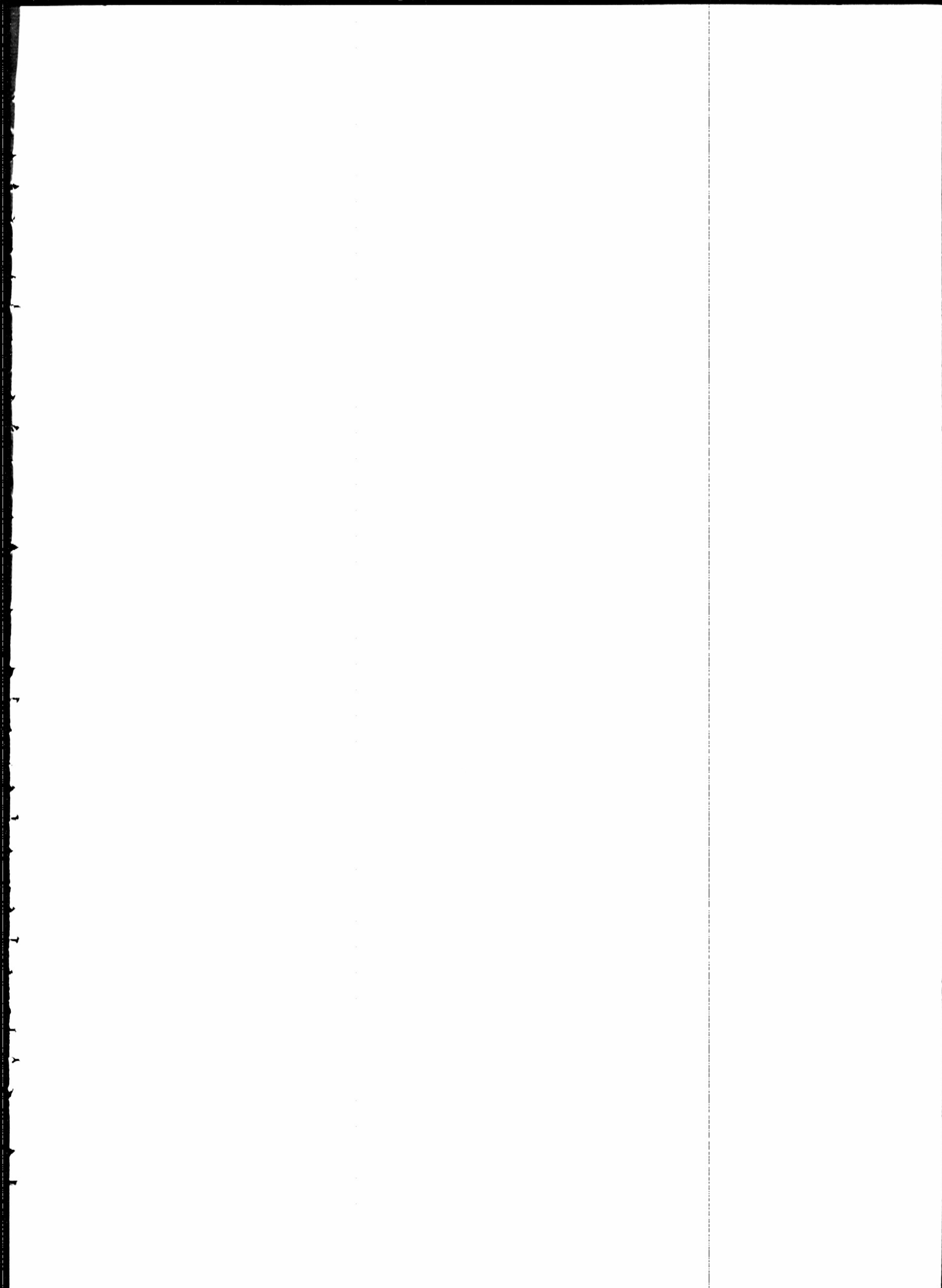
Passengers and their baggage between the Washington National Airport on the one hand, and points and places in the District of Columbia and that portion of Maryland, situated within the Washington Metropolitan Area Transit District on the other, restricted to passengers having a prior or subsequent movement by air to or from the Washington National Airport.

(3) That Airport Transport, Inc., shall forthwith file with the Commission appropriate tariffs pursuant to the authority granted herein.

(4) That in all other respects, the application of Airport Transport, Inc., and Airport Transport, Inc., of Virginia, be, and the same is, hereby denied.

BY DIRECTION OF THE COMMISSION:


DELMER ISON
Executive Director



1964

PETITIONER'S REPLY BRIEF

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

18.093
No. ~~18,093~~

1964

HENRY G. BARTSCH,
d/b/a
AIRPORT DISPATCHING SERVICE,

Petitioner,

v.

THE WASHINGTON METROPOLITAN
AREA TRANSIT COMMISSION,

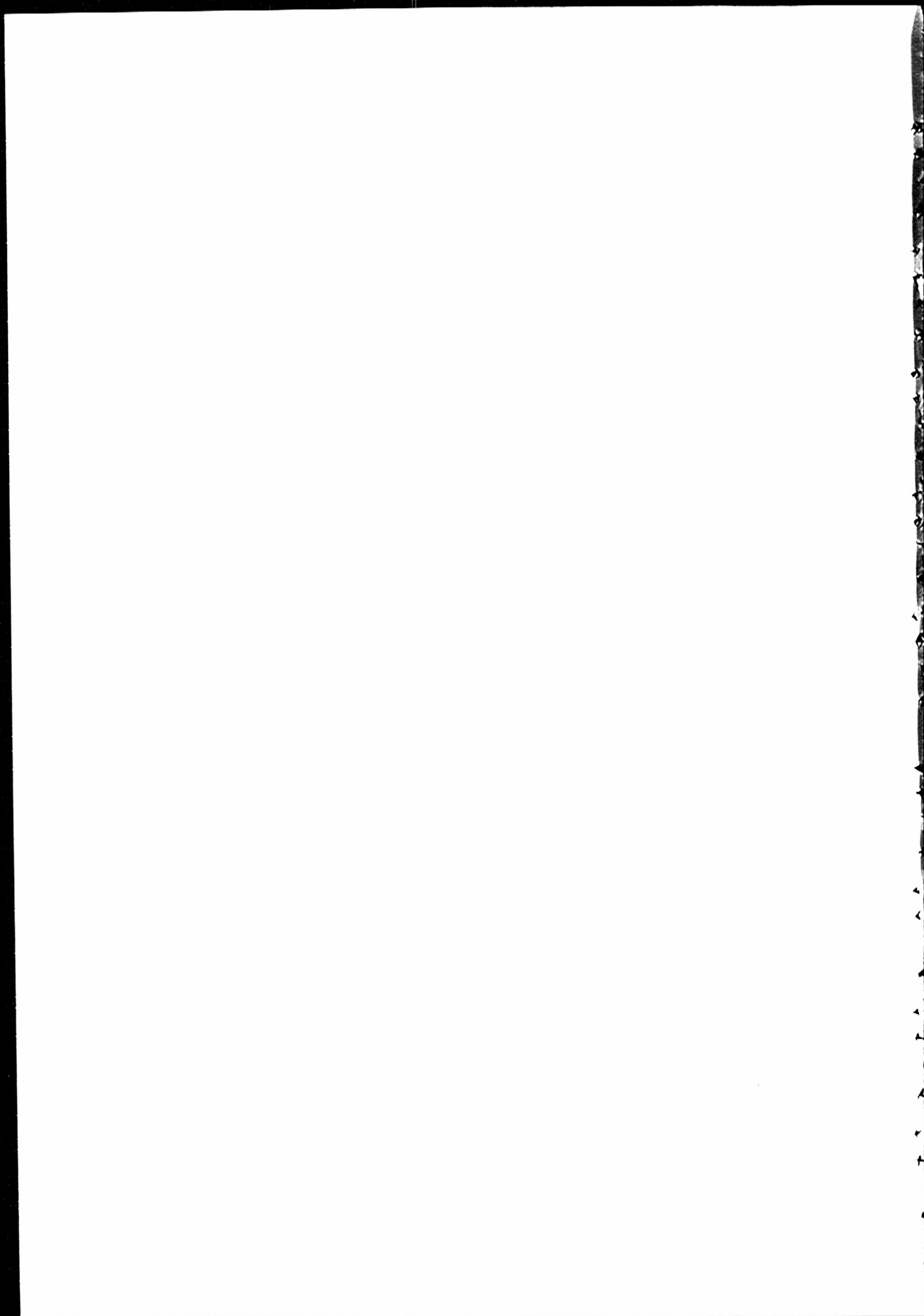
Respondent.

Petition for Judicial Review of
WMATC Administrative Order

JACK H. OLENDER

910 - Seventeenth St., N.W.
Washington, D. C. 20006

Attorney for Petitioner



United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,093

HENRY G. BARTSCH,
d/b/a
AIRPORT DISPATCHING SERVICE,

Petitioner,

v.

THE WASHINGTON METROPOLITAN
AREA TRANSIT COMMISSION,

Respondent.

Petition for Judicial Review of
WMATC Administrative Order

PETITIONER'S REPLY BRIEF

The Petitioner for Review of WMATC Order No. 283, by and through his counsel, submits the following memoranda under the provisions of Rules 16(d) and 17(c) of this Court.

I.

The Respondent Commission's reference (Brief, p. 4) and unprecedented reliance upon the Compact Amendment of October 9, 1962 (Public Law 87-767; 76 Stat. 764) is in open conflict with its administrative ruling:

"This application relates to a grandfather application filed as of March 22, 1961, and any subsequent law, in my opinion, has nothing to do with it." (Ruling of Hearing Examiner Ison at Proceedings, February 12, 1963, Tr. p. 368)

II.

The Respondent Commission cites no authority for its new contention (Brief, p. 3, "2") that the statutory limitation (Public Law 86-794; 74 Stat. 1031, Article XII, sec. 1-c) upon its jurisdiction can be avoided and "mooted" by issuing certificates in "unrestricted" terms.

To the contrary, your Petitioner quotes the following:

"In view of the large area of operations allowable without operating authority under the taxicab exemption [Public Law 86-794; 74 Stat. 1031], which encompasses a substantial portion of applicant's group-riding limousine service, it becomes necessary to carefully delineate specifically the authority being granted applicant in order to avoid any encroachment upon the exempt status of bona fide taxicab operations. This is essential because to grant an applicant a certificate of public convenience and necessity for the operation of vehicles with a seating capacity of eight (8) passengers or less is to deny in the same breath a non-holder of such a certificate the right to perform the same or similar service. The taxi-cab industry is entitled to the same protection under the law — even though operating under a legal exemption — as are holders of operating authority.

"In order that the taxicab industry may operate in a flexible manner as contemplated by the Compact, the Commission has applied a liberal interpretation to the taxicab exemption as set forth in Section 2(d),

Article XII, Title II, of the Compact [Public Law 86-794; 74 Stat. 1031]. The extent to which the Commission may control the operations of vehicles with a seating capacity of eight (8) passengers or less, is carefully set forth in the parenthetical clause in the aforementioned section of the Compact. This parenthetical clause reads as follows:

' . . . (other than a vehicle operated, with the approval of the Commission, between fixed termini on regular schedules) '

"Succinctly stated, the operation of motor vehicles having a seating capacity of eight (8) passengers or less, not including the driver, are exempt from the certificate requirements of the Commission unless such vehicles are operated 'between fixed termini on regular schedules.'

"When this interpretation is applied to the instant application, the conclusion to be drawn therefrom is obvious. The only operations of applicant by motor vehicles with a seating capacity of eight (8) passengers or less coming within the certificate requirements of the Commission are those scheduled operations from the downtown hotels and the downtown terminal to the Washington National Airport. All other operations of applicant by this size vehicles fall within the taxicab exemption [Public Law 86-794; 74 Stat. 1031]." (Wash. Met. Area Transit Comm. Order No. 251, pp. 18, 19; Appendix to Respondent's Brief)

III.

Respondent has failed to identify one scintilla of evidence establishing the portion of the record in this cause which evidences the grantee's 1961 "grandfather" operation of *buses* between the *Maryland portion* of the Washington Metropolitan Area Transit District and the Washington National Airport, as *specifically* certificated by WMATC Order No. 283.

IV.

The Court is requested to take judicial notice of Title 47, sections 2331(b) and 2331(c) of the District of Columbia Code (1961) and of the therein requirement for licensing and taxation of routed and non-routed *buses* operating on the streets and highways of the District of Columbia. Under the provisions of Article XII, sections 21 and 22 of the Compact (74 Stat. 1031), the Respondent Commission is obligated to be informed of, and give full faith and credit to, "all rules, regulations, orders, decisions, or other action prescribed, issued, made, or taken by . . . the Public Utilities Commission of the District of Columbia" and in effect on March 22, 1961.

Despite petitioner's repeated protests, the Respondent Commission *to date* continues to fail and refuse to take administrative notice of the Records of the Public Utilities Commission, D.C. which confirm that neither the named certificant, Airport Transport Inc., nor *Airline* Transport, Inc. under the executive management and ownership of their common President Moe Lerner, ever in 1961 had D.C. P.U.C. authority to operate from the ^{Buses} *District of Columbia* to the Washington National Airport.

Respectfully submitted,

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